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# Novel Properties: Communication, Copyright, and the British Novel, 1710-1774

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## Abstract

Literary investigations of copyright have generally taken a retrospective view of British eighteenth-century copyright law. Influenced by the assumptions and methods of historical materialism, and aiming to critique romantic notions of authorship, such projects have sought in the eighteenth century a narrative of the 'rise of the romantic author.' Though productive, this approach has sometimes obscured other influential strains of thought about authorship, interpretation, and literary property that were widespread in the eighteenth century. This dissertation seeks to shift focus away from the historical materialist critique of romantic authorship--part of a debate that has its roots in the *nineteenth* century--and towards a related but characteristically *eighteenth*-century debate between innatism and empiricism. Roughly speaking, this debate was over whether 'ideas' (however defined) are innate, present in the human mind from birth, or are acquired exclusively through experience. Discussions of literary property in the eighteenth century concerned themselves with this debate precisely in so far as literature may be said to involve the production, transmission, or consumption of ideas. To reexamine the rise of copyright law in Britain within the frame of this debate, this dissertation examines court records and other legal documents that discussed copyright law and the related notion of a property in ideas; philosophical tracts that attempted to define the term 'idea' and explain the origin of ideas; and literary works that problematized the production, transmission, consumption, and interpretation of literary ideas. Read alongside one another, these texts reveal a proliferation of models through which to understand the novel concept of literary property. To explore the question of whether the ideas in a text could be *communicated* without being made *common*, these texts drew on a wide range of metaphors--political sovereignty, land ownership, marriage, mathematical proof, and sentimental exchange--to serve as models of communication. Each of these models had different implications for the concept of literary property, and many of them were compatible with literary property, while remaining *incompatible* with romantic notions of authorship. The association between copyright and romantic authorship, then, is not necessary but contingent, subject to transformation by the accidents of history.

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NOVEL PROPERTIES: COMMUNICATION, COPYRIGHT,  
AND THE BRITISH NOVEL, 1710-1774

Scott Enderle

A DISSERTATION

in

English

Presented to the Faculties of the University of Pennsylvania

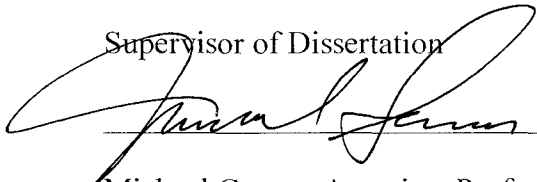
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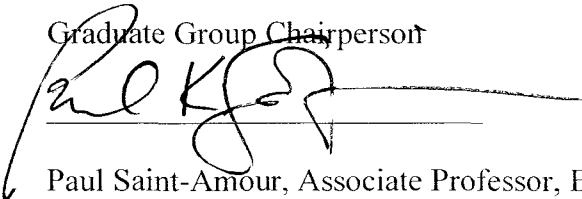
2011

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## ABSTRACT

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To reexamine the rise of copyright law in Britain within the frame of this debate, this dissertation examines court records and other legal documents that discussed copyright law and the related notion of a property in ideas; philosophical tracts that attempted to define the term ‘idea’ and explain the origin of ideas; and literary works that problematized the production, transmission, consumption, and interpretation of literary ideas. Read alongside one another, these texts reveal a proliferation of models through which to understand the novel concept of literary property. To explore the question of whether the ideas in a text could be *communicated* without being made *common*, these texts drew on a wide range of metaphors—political sovereignty, land ownership, marriage, mathematical proof, and sentimental exchange—to serve as models of communication. Each of these models had different implications for the concept of literary property, and many of them were compatible with literary property, while remaining *incompatible* with romantic notions of authorship. The association between copyright and romantic authorship, then, is not necessary but contingent, subject to transformation by the accidents of history.

## TABLE OF CONTENTS

Introduction	
<i>Copia</i> and Copyright . . . . .	1
Chapter One	
Innateness and Experience in the Eighteenth-Century Copyright Debates; or, What Is Reading? . . . . .	19
Chapter Two	
The Vacuous Sovereign in Fielding and Hobbes . . . . .	64
Chapter Three	
The Matter of Property in <i>Clarissa</i> . . . . .	97
Chapter Four	
Tristram Shandy and the Death of the Patron . . . . .	139

## Introduction:

### *Copia and Copyright*

The word ‘copy’ comes from the Latin *copia*. ‘Cornucopia’ and ‘copious’ are derived from the same root, which means ‘abundance.’ The term was applied to texts in the classical Latin phrases *habere copiam legendi* and *facere copiam describendi*, meaning “to have the ability to read” and “to give the power to transcribe,”<sup>1</sup> and was used by Cicero and Quintilian in their discussions of rhetoric.<sup>2</sup> These meanings crossed over into Medieval Latin; in 1511, Erasmus wrote *On Copia of Words and Ideas*,<sup>3</sup> a rhetoric handbook that aimed to cultivate “‘abundance,’ ‘richness,’ ‘fullness’”<sup>4</sup> of expression in students.

At least as late as the seventeenth century, the anglicization of *copia*, ‘copy,’ could also signify abundance. However, its more specific meaning, ‘transcript,’ was already present in Middle English, and ‘copy’ could also signify, somewhat ambiguously, the source of a transcript: “Be it trwe, or be it fals,/Hyt is as the coopy was.”<sup>5</sup> This second meaning was amplified by seventeenth and eighteenth-century booksellers, who came to use the word ‘copy’ not to denote one of many duplications,

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<sup>1</sup> Tom Mc. Arthur, ed., *The Oxford Companion to the English Language* (New York: Oxford University Press, 1992), 264.

<sup>2</sup> Desiderius Erasmus, *Collected Works*, v. 24 (Toronto: University of Toronto Press, 1978), xxxv.

<sup>3</sup> *De Utraque Verborum ac Rerum Copia*, literally “on both words and matters abundant,” based on a phrase from Quintilian (*ibid.* xxxv).

<sup>4</sup> *Ibid.* xxxv.

<sup>5</sup> Edward E. Foster, ed., *Three Purgatory Poems* (Kalamazoo, Michigan: Medieval Institute Publications, 2004), lines 2382-83.

nor even to denote a particular source copy to be duplicated, but rather to denote the *right to duplicate* a particular text. They spoke of purchasing “Copies for valuable considerations” from authors, and insisted that this purchase was not merely of any one physical copy, but of the right to copy.<sup>6</sup> In modern English usage, we generally append ‘-right’ to this formation, maintaining at least some emphasis on the fundamentally social and political nature of copyright. But in the seventeenth and into the eighteenth century, this emphasis was often missing. At least among printers and publishers, ‘copy’ was a simple, straightforward noun denoting something that could be possessed, bought, sold, inherited, and so on—in short, a thing.

By transforming the right to copy into a thing, booksellers achieved what looks like—from a modern perspective—a startling inversion. Though there may be many ‘copies’ of a text, and though there can even be many sources from which to make new copies, there can be only one right to copy a text.<sup>7</sup> When reified, this right begins to look less like a social convention and more like a mine or wellspring—a productive, unique, and impossible-to-duplicate resource to be tapped and exploited by its owner. ‘Copy’ becomes the unique source from which all copies of a text arise; ‘copy’ in this sense is not *a* copy, nor even *a* source, but rather *the* source—or, the original, ‘original’ being a word that in the eighteenth-century was still sometimes understood as a synonym for ‘origin.’<sup>8</sup> The word ‘copy’ could therefore be used to denote, variously,

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<sup>6</sup> *The Case of the Booksellers and Printers Stated* (1638), rpt. in *English Publishing, the Struggle for Copyright, and the Freedom of the Press*, ed. Stephen Parks (New York: Garland, 1975).

<sup>7</sup> This follows from the assumption that there is only one text—a problematic assumption, but one that most forms of copyright law cannot easily do without.

<sup>8</sup> For example, the subtitle of the first chapter of the second book of Locke’s *Essay Concerning Human Understanding* is “Of Ideas in general. and their Original.”

the sheer abundance of language; a particular instance of that abundance produced by transcription; the less-common original that a transcription duplicates; or the phenomenally scarce, costly, and perhaps fictional, origin of all such transcriptions.

As paradoxical as it may seem, however, this conjunction of meanings runs parallel to the two usages of *copia* stated above: “to have the ability to read” and “to give the power to transcribe.” In early usage, and even into the eighteenth-century, under both the term ‘copy’ and its etymon *copia*, the consumption and the production of linguistic abundance were semantically yoked. This is not to say that to read and to transcribe were considered precisely the same thing, but simply that they were seen as two closely-related activities within a category of broadly similar behaviors. To read and to transcribe were both to partake of the abundance of language. They could be distinguished, but they were not fundamentally different from one another.

This dissertation starts from the premise that the systematization of copyright law in the eighteenth century demanded and motivated the articulation of a stark and well-developed distinction between reading a text and transcribing a text. To create a sufficiently general copyright law, it became necessary to conceptualize the right to transcribe a text as a private, exclusive, and assignable right, while maintaining the public and general nature of the right to read texts. I argue that doing so required eighteenth-century jurists, authors, printers and readers to rethink the nature and aims of communication. In prior models of communication, I argue, to publish a text was to make public all aspects of that text, rendering it common. To keep private the right to transcribe a text, while simultaneously rendering common the right to read that text, a

new model of communication was required.

Indeed, *many* new models of communication arose. Although I argue that earlier models conceptualized communication as a wholesale making-common, no single model of communication was hegemonic prior to the eighteenth century, and no single model of communication arose to replace prior models. Instead, a proliferation of new models arose, each of which attempted to give an account of what is communicated when a text is published, what is not communicated, and why. Most importantly, for my purposes, these models had things to say not only about how texts are produced, but about how texts are, or ought to be, consumed. Reading, after all, involves copying. Whether we think about it from a twenty-first century neuroscientific point of view (in which the text is copied by the retina and processed by the brain) or an eighteenth-century point of view (in which memorization of texts was seen as crucial to understanding texts), reading can be seen as a form of copying. Given such a view of reading, a law that outlawed any kind of copying a text without permission of the author would outlaw reading the text. In short, I argue that to account for this new, partially privatized mode of communication, the nature of *interpretation* had to be rethought.

Throughout the seventeenth and arguably well into the eighteenth century, there persisted an influential neo-platonic understanding of communication, which held that certain ideas are innate, and exist within the minds of all humans. Communication, according to this view, is not the transmission of ideas from one individual to another, but is rather the activation of ideas that are already present in the minds of an audience, and everyone else as well. This view of ideas as innate is troublesome for any copyright



law that attempts to make private property out of an idea, for how could one make private property out of something that everyone already possesses? This was a central question in the debates over copyright that took place between the enactment of the first copyright statute in 1710 and the decision of *Donaldson v. Beckett* in 1774. The 1710 statute, commonly known as the Statute of Anne, made little attempt to differentiate between physical copies, abstract works, and rights to copy, using the ambiguous term ‘copy’ to refer to all three at various points.<sup>9</sup> Alexander Pope was involved in an important case, *Pope v. Curll* (1741), which concerned the property status of letters: did the writer or the receiver of the letter retain the copyright? This case established the possibility of incorporeal property in a text, but left many questions about the nature of this property, as evidenced by the presiding justice Lord Hardwicke’s equivocal phrasing: “I am of opinion that it is only a special property in the receiver, *possibly* the property of the paper may belong to him; but this does not give a license to any person whatsoever to publish them to the world, for at most the receiver has only a joint property with the writer.”<sup>10</sup> The question of whether this was a property in *ideas*, in some other incorporeal thing, or strictly in the manuscript itself, remained unanswered. Other important cases include *Tonson v. Collins* (1761), in which William Blackstone articulated an influential account of copyright as a bona-fide property in ideas, but which was eventually thrown out because the plaintiffs and defendants were found to be in collusion, hoping to set a precedent in favor of stronger copyright law; *Millar v.*

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<sup>9</sup> For the full text of the law, see Ronan Deazley, *On The Origin of the Right to Copy* (Portland, Oregon: Hart, 2004), 233-238.

<sup>10</sup> Quoted in Deazley, 71 (my emphasis).

*Taylor* (1769), which led to a ruling in favor of a property in ideas, but was also one of only a handful of cases brought before the Court of King's Bench in the 1760s to produce a dissenting opinion; and *Donaldson v. Beckett* (1774), which overturned - *Millar v. Taylor*, ruling against a property in ideas, but in a fashion so muddled and confusing that the case has been consistently misinterpreted for more than two centuries.<sup>11</sup> The question of whether copyright could be defined as a bona-fide property in ideas—or in any kind of Platonic abstraction—had no definitive legal answer until the nineteenth century.<sup>12</sup>

### **The Anti-Platonism of Copyright**

Scholars discussing copyright have often concerned themselves with the relationship between copyright and the Platonic philosophical tradition. However, most commentary has seen the Platonic tradition as largely complicit with the rise of copyright law. With its emphasis on originality, uniqueness, attribution, and fixity, copyright has often been understood as a codification of romantic notions of authorship, and, more broadly, as a continuation of a western tradition of essentially Platonic logocentrism that privileges the presence of the author, or, barring that, privileges the authentic and authenticated text precisely insofar as it is an expression of its author's

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<sup>11</sup> Deazley, 191-210. See also Mark Rose, *Authors and Owners* (Cambridge, Massachusetts: Harvard University Press, 1993), 154.

<sup>12</sup> These early cases moved towards, but did not explicitly articulate, a distinction between 'idea' and 'expression.' This distinction was finally formalized in a series of cases over the course of the nineteenth century, with the final outcome that only an 'expression' of an 'idea,' and not the 'idea' itself, could be copyrighted. These cases culminated, in the U.S., with the oft-cited *Baker v. Selden* (1879). Among many commentators, however, this distinction remains a contentious one: see, for example, Richard H. Jones. "The Myth of the Idea/Expression Dichotomy in Copyright Law." *Pace Law Review* 10.3 (Summer 1990), 551-607.

will. One of the key arguments of this dissertation is that by emphasizing the romantic and logocentric aspects of copyright law, scholars have failed to appreciate the ways in which the rise of copyright law entailed a radical *departure* from certain fundamental Platonic tenets.

The nature of this departure is illustrated in the opening pages of Jacques Derrida's *Limited Inc.* Even as he offers an anti-Platonic critique of the notion that an utterance or inscription can be traced back and attributed to one source, Derrida asks a strikingly Platonic question:

Had I asserted a copyright, "for saying things that are obviously false," there could have been no doubt as to its appropriateness. But that John R. Searle should be so concerned with his copyright, for saying things that are obviously true, gives one pause to reflect upon the truth of the copyright and the copyright of the truth... if Searle speaks the truth when he claims to be speaking the truth, the obviously true, then the copyright is irrelevant and devoid of interest: everyone will be able, will in advance have been able, to reproduce what he says.<sup>13</sup>

Here Derrida moves away from his discussion of the problems of authorship, origin, and attribution, and turns his attention to "everyone": neither to some sovereign author, nor to some anonymous collective responsible for producing (or re-reproducing) a text, but to those responsible for consuming it. And in this moment, suddenly the logic of copyright seems not pro- but anti-Platonic, asserting a private property in what by any

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<sup>13</sup> Jacques Derrida, *Limited Inc* (Evanston, Illinois: Northwestern University Press, 1988), 30.

straightforward flavor of Platonism would seem to be freely available to all: the truth.

If we attend to the effects of copyright law on notions of readership, on notions of reception, interpretation, consumption, the rise of copyright law begins to look less like a staid continuation or amplification of the metaphysics of presence, and more like a startling break. Insofar as concepts such as inspiration and original genius are deployed in support of copyright law, their corollary is that the most fundamental meanings of authors are forever unavailable to readers, because copyright law expressly concerns itself with that which is *not* made public when a text is published. Perhaps the illusion remains that we could and should seek out the intended meanings of the author; but the logic of copyright, at least when taken to its greatest extreme, dictates that those meanings will always be unavailable to readers.

That fact may be taken to have both ‘positive’ and ‘negative’ consequences for the consumers of texts. On the one hand, by elevating the creative productions of the sovereign author beyond the ken of mere readers, the logics of copyright and of romantic authorship produce an asymmetry of power and a corresponding hierarchy of author and reader. On the other hand, the very same logics—perhaps inadvertently—make available a conception of reading as *necessarily productive* of new meanings. Pushed to their limit, these logics dictate that the aim of reading is no longer to seek out the true meanings and fundamental forms at the heart of a literary work, but to take the literary work as a starting point for producing new meanings and new forms.

### **Innatism and Copyright**

This shift of emphasis from producer to consumer calls for a parallel shift in methodology. Discussions of copyright in the eighteenth century have often focused on the economic forces at work in its formation. Mark Rose, for example, describes copyright as “a specifically modern formation produced by printing technology, marketplace economics, and the classical liberal culture of possessive individualism”<sup>14</sup>, while Martha Woodmansee insists that

the ‘author’ in its modern sense is a relatively recent invention.

Specifically, it is the product of the rise in the eighteenth century of a new group of individuals: writers who sought to earn their livelihood from the sale of their writings to the new and rapidly expanding reading public.... in an effort to establish the economic viability of living by the pen, these writers set about redefining the nature of writing.<sup>15</sup>

Without denying that economic forces were the primary motivating factor in the development of copyright law, I argue that an emphasis on economic factors threatens to obscure other central concerns of eighteenth-century participants in the copyright debates. Much recent commentary on eighteenth-century copyright law has been part of a broader scholarly reaction against what Jerome McGann famously termed *The Romantic Ideology*—another debate, if you will, between influential strains of romanticism and historical materialism. Whereas romantic notions of authorship hold that literary works are the unique and fixed

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<sup>14</sup> Rose, 142.

<sup>15</sup> Martha Woodmansee, “The Genius and the Copyright,” *Eighteenth Century Studies* 17.4 (Summer 1984), 426.

products of genius and inspiration, and expressions of a sovereign poetic will, historical materialism posts an alternative view of literary works as the fluid and mutable creations of multiple collaborators, filtered through many divided consciousnesses, and misprinted on fragile slips of paper. However, both of these notions of authorship draw heavily from philosophical views that only reached their maturity in the *nineteenth* century. A view of the rise of copyright in the eighteenth century through either of these two lenses is therefore a necessarily retrospective view that partially obscures its object.

Considering eighteenth-century copyright within the frame of this debate between romanticism and historical materialism, one might expect that arguments for and against copyright would line up neatly with these two understandings of authorship. People in favor of stronger copyright protection would want to think of the literary work as a Platonic abstraction, fixed and eternal, produced by inspiration rather than labor, and linked to one individual; while people against stronger copyright protection would prefer to see the work as the temporary product of temporal labor—a fleeting eddy in an endless flow of reduplicated communicative matter. But in eighteenth-century courtrooms, this neat correspondence did not hold. For example, almost as often as not, supporters of copyright were happy to see works as mere physical books produced by corporeal labor, while critics of copyright were more inclined to view works as collections of eternal and fixed ideas that existed prior to any labor. To understand what was happening in those courtrooms—to understand

how copyright developed—and to understand the relationship between copyright and literary production in the eighteenth century—I argue that we should place these two figures of authorship in brackets. Instead, we should interpret the rise of copyright law in terms of a different debate—a debate between empiricism and innatism in the seventeenth and eighteenth centuries.

This debate, which was part of a broader debate between empiricism and rationalism, is in some ways comparable to the debate between materialism and romanticism. However, the questions asked in these debates were different. Most notably, whereas a Materialist might first ask what the material conditions of reading and writing are or were, an empiricist would be more likely to ask what the *experiential* conditions of reading and writing are. Certainly empiricism is compatible with materialism, but it did not automatically entail materialism.<sup>16</sup> At the same time, while many rationalists would sympathize with a Romantic view of writing as an expression of something innate within the writer, rationalists would concern themselves more with universal reason than with individual inspiration in the writing process. By looking at copyright within the context of this debate, it becomes much clearer why critics of copyright sound so platonic, and why supporters of copyright sound at times like modern materialists.

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<sup>16</sup> According to John Locke, this is a matter about which an empiricist may have to remain agnostic: "we have the Ideas of Matter and Thinking, but possibly shall never be able to know, whether any mere material Being thinks, or no... GOD can, if he pleases, superadd to Matter a Faculty of Thinking." *An Essay Concerning Human Understanding* (New York: Oxford University Press, 1975), 540-541.

### **Laboratories for Reification: Copyright and the Novel**

To trace the contours of eighteenth-century debates over copyright, and their relationship to the underlying philosophical conflict between empiricism and innatism, I begin by comparing the philosophical roots and the legal outgrowths of this conflict, broadly conceived, between empiricism and innatism, paying special attention to the ways they articulate competing models of communication. These competing models of communication, I argue, both serve fundamentally the same purpose: the reification of social relations. Innatism, and the neo-platonism of which it partakes, posits as the foundation for communication certain things called “ideas,” which are universal, eternal, and in the possession of all individuals. Empiricism also explains the social activity of communication in terms of “ideas,” but posits that these ideas are not eternal or universal, but are local and temporal, existing within the isolated minds of individuals. In essence, I argue that any model of communication serves to reify social relations, and the difference between innatist and empiricist models of communication is primarily that the latter reifies social relations in a manner amenable to propertization, while the former does not. With that in mind, I argue that the eighteenth-century novel was (among many other things) a laboratory for reification—an experimental space in which new models of communication were proposed and tested.<sup>17</sup> Each of the novelists I analyze here sets forth a new model of communication—or more precisely—they each turn to a different mode of social interaction, using that mode as a figure through which to concretize the abstractions of language in a less Platonic and more propertizable way.

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<sup>17</sup> I choose the novel because it, arguably more than any other form in the eighteenth century, developed alongside and even depended upon the financial incentive that copyright law provided to authors.



Fielding, I argue, uses the figure of politics and sovereignty; Richardson, the figure of marriage and domestic relations; and Sterne, the figure of gift-giving and sentimental exchange.

My dissertation begins with the philosophical and legal discourse around communication and copyright, considering the legal actions that took place between 1739 and 1774 and the philosophical prejudices and assumptions deployed therein. My first chapter, “Innateness and Experience in the Eighteenth-Century Copyright Debates; or, What Is Reading?” argues that the debates turned on a philosophical disagreement about the innateness of ideas and the possibility of their communication. To resolve this disagreement, booksellers began to construct a concept that would come to be known as “expression” by combining a version of Platonic innatism—a view of ideas as the product of innate genius—with a Lockean anti-innatism—a view of ideas as the product of labor. However, as I argue, the concept of expression also preserves some of the ambivalence of its philosophical forebears about the possibility of a natural or perpetual property in ideas. On one hand, Platonic innatism has historically emphasized the universality of ideas, and hence the literal pre-possession of literary ideas by both author and reader; on the other, Lockean models of communication draw attention to the labor not only of authors, but also of readers. Copyright must therefore be understood as one component of a collaboration between networks of writers and readers—as well as printers, manufacturers, and booksellers.

To consider the political properties of these collaborative networks, my second chapter, “Henry Fielding and the Sovereign Author,” shows how metafictional

frameworks in Fielding's novels structure, and are structured by, author-reader relations. At one point in *Tom Jones*, Fielding declares himself the "Founder of a new Province of Writing" and the framer of laws that "my Readers, whom I consider as my Subjects," must obey.<sup>18</sup> The irony of this declaration is not lost on Fielding: any sovereign's power (at the practical if not the theoretical level) arises from the loyalty of his or her subjects. Likewise, an author's property in a text depends on his or her readers' recognition of the claim. Fielding responds to the threat of unruly reading in a passage from his first novel, *Joseph Andrews*, in which he preemptively defends himself from charges of libel, claiming to write "not to expose one pitiful wretch ... but to hold the glass to thousands in their closets."<sup>19</sup> Threatened by readers' ability to accuse him of libel, Fielding recasts his novel as an instrument of social control, and in doing so, I argue, reiterates while partially transforming the views set forth in Thomas Hobbes' *Leviathan*. But as in *Tom Jones*, this literary instrument of control paradoxically relies on readers' own powers of self-control; only through the participation of readers can authors claim sovereignty over their texts.

What happens when such readerly self-control fails? Chapter three, "Copyright and the Matter of Virtue in *Clarissa*," attempts to answer this question by taking as its starting point an act of piracy. In 1753, Samuel Richardson learned that the novel he had finished and partially printed, *The History of Sir Charles Grandison*, was being pirated by a group of Irish printers. Irish law gave Richardson no recourse, so he published two pamphlets denouncing the piracies. I argue that Richardson's

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<sup>18</sup> Henry Fielding, *Tom Jones*, Thomas Keymer and Alice Wakely eds. (New York: Penguin, 2005) 74.

<sup>19</sup> *Ibid.*, 240.

denunciation, even as it calls for stronger copyright protection, undermines the romantic view of authorship, positing instead a figure of literary virtue, and a corresponding form of literary property, modeled on domestic virtue. In this model, I argue, readers and authors enter into a covenant, the aim of which is to prevent illegitimate literary reproduction.

The dissertation's fourth chapter, "Tristram Shandy and the Death of the Patron" reconsiders the relationship between readers and authors in the mid-century by focusing on a droll episode in Sterne's novel, in which the title character attempts to market a text. The eccentric Shandy does so not by selling his copyright to a bookseller, but instead by offering to dedicate the text—which already carries an idiosyncratic dedication to an unnamed patron—to the highest bidder. He transforms his potential patron from a powerful citizen-protector into an anonymous face in an auction crowd, dramatizing copyright law's potential to turn any reader into a patron of literature. Accordingly, Sterne encourages his readers to encounter the novel not as an ideal and fixed work under the protection of a patron, but as a material book to be manipulated, distorted and transformed at will by its readers. Most notably, this book is figured as a gift to Sterne's readers, an item of sentimental exchange. In the imaginative universe of *Tristram Shandy*, then, copyright does not protect the author's immaterial property in his text; rather, it protects the relationship between author and reader, materialized in the form of a book, from the intrusions of patronage.

#### **A Note On Material and Immaterial Texts**

In this dissertation, I use the terms "material world" and "immaterial world" regularly. I do so because I take it for granted that these two worlds exist—if not on some plane of absolute truth, then at least on the plane of 18th-century discourse. The idea of a clear division between "material" and "immaterial" things is a difficult one to maintain; and yet much reasoning about copyright law proceeds from the assumption that such a division exists. In this dissertation, I use these terms in ways that recognize their deep philosophical lineages. The idea that the material world is but an echo or shadow of an eternal (and hence immaterial) world of forms is at least as old as Plato; and it still has its adherents, especially among mathematicians. It has been often suggested that most mathematicians are so-called platonists, who believe that mathematical abstractions such as numbers have existence independent of any representation we create.<sup>20</sup> According to this view, five stones can be used to represent the number five, but the number five exists independently of the stones, and of any other possible material representation. It is a short step from there to conclude that the number five must be an immaterial entity.

In many respects, the idealized texts that authors are said to own, and that copyright law attempts to protect, resemble such mathematical objects. Texts are constructed from strings of discrete symbols; those symbols may easily be encoded by natural numbers<sup>21</sup>; and those numbers may be concatenated into a single, very large number—which, as it happens, is precisely how computers represent texts. Every

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<sup>20</sup> See, for example, Philip J. Davis and Reuben Hersh, *The Mathematical Experience* (New York: Mariner Books, 1981), 321.

<sup>21</sup> Defined as 0 plus the positive integers.

possible unique text can be assigned a unique number in this way, and every possible number can be used to generate a unique text.

This one-to-one correspondence between texts and numbers has an interesting consequence. If one believes that numbers in their most abstract form have an independent, immaterial existence, then it is not a great stretch to suggest that works of literature do as well, and even that their existence precedes their so-called "creation" by an author. The set of all natural numbers thus resembles the eponymous subject of Borges' short story "The Library of Babel," which contains all possible 410-page books. Raymond Queneau's *A Hundred Thousand Billion Poems* provides a concrete realization of a somewhat smaller library: by taking ten sonnets using precisely the same rhyme scheme, printing them, and slicing the pages between each line, Queneau made it possible to recombine the lines, resulting in, quite literally, a hundred thousand billion—*possible*—sonnets. Does each of these sonnets exist before being constructed by a user of the book? Should Queneau hold the copyright on every one? Or just the initial ten? Could another writer create a sonnet using only Queneau's book, publish it, and hold the copyright? One's answers to these questions may well reveal biases for or against mathematical Platonism.

Queneau's example notwithstanding, the generation of every possible number in order to discover every possible text is an uneconomical method of literary production. We value authors' ability to search the Library of Babel for particular arrangements of words that please us, and such searching depends on material support of many kinds. This brings us from Plato to Marx—from the world of immaterial forms to the world of

material production. If we hold that numbers, and therefore texts, have existence prior to their physical creation, then the labor of authorship is no longer the labor of creation, but the labor of translation from one world to the next. This labor is inherently physical; isn't it strange, then, that it would be protected by property in an immaterial form?

I do not intend to resolve problems such as these. The line of reasoning outlined above admits many qualifications, counter-arguments and defenses, none of which, I believe, yields a reliable conclusion, but many of which reduce to differences of opinion regarding the degree to which numbers, "forms" or "patterns" exist in the absence of material embodiments or representations. This latter assertion is one of the facts I hope to demonstrate—both in this chapter, and in my dissertation as a whole. Many of the contradictions and confusions apparent in the history of copyright law owe their existence to this deep, ancient and unresolved question: what is a form?

**Chapter One:**  
**Innateness and Experience in the Eighteenth-Century Copyright Debates; or,**  
**What Is Reading?**

Amid the “pleasant and fertile field[s]” and “blooming spring[s]” that stand as metaphors for the bounty of genius in Edward Young’s *Conjectures on Original Composition* (1759), there sprouts a puzzling caveat.<sup>22</sup> After completing a 36-page encomium to the original creations of genius—articulating therein a system of literary value that would influence two generations of romantic authors—Young seems to feel that he has overstated his case. “A caution is necessary,” he explains:

In the Fairyland of Fancy, Genius may wander wild; there it has a creative power, and may reign arbitrarily over its own empire of Chimeras. The wide field of Nature also lies open before it, where it may range unconfined, make what discoveries it can, and sport with its infinite objects uncontrouled, as far as visible nature extends, painting them as wantonly as it will: But what Painter of the most unbounded and exalted Genius can give us the true portrait of a Seraph? He can give us only what by his own, or others eyes, has been seen; though that indeed infinitely compounded, raised, burlesqued, dishonoured, or adorned: In like manner. who can give us divine truth unrevealed? (38-39)

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<sup>22</sup> Edward Young, *Conjectures on Original Composition*, London, 1759. *Eighteenth Century Collections Online*. Gale (CW104998891), 9-10. Later references to this text are noted parenthetically.

The initial pages of Young's *Conjectures* had attributed to literary genius an almost divine creative power, but here, suddenly, it appears that the creative powers of genius are confined to a mere "Fairyland," an "empire of Chimeras." Ex-nihilo creation is indeed the power of genius, subject only to the paradoxical restriction that the creations of genius cannot exist at all. Should genius attempt to escape the bounds of this fairyland of imagination and concern itself with truth—whether natural or divine—it must be content to imitate.

The incongruity of these sentiments has much to do with their source; they were first expressed not by Young, but by Samuel Richardson, the commissioner and printer of the *Conjectures*. In a letter to Young prior to the publication of the *Conjectures*, Richardson suggested several additions, including much of the passage quoted above, which Young adopted with only a few minor alterations. It is tempting to analyze the *Conjectures* on its own terms, and ask just how original it is, insofar as it includes passages copied directly from another writer. However, it would be a mistake to regard even Richardson as the source of this passage, which consists largely of commonplaces drawn from eighteenth-century empiricism. When Richardson or Young speak of imitating Nature—when they claim an author can give us "only what by his own, or others eyes, has been seen"—they are repeating an epistemological claim developed by John Locke in his *Essay Concerning Human Understanding* (1690). For Locke and his followers, such as David Hume, all human knowledge has its origin in sensory experience. Even the "empire of Chimeras" in the above passage would be treated by empiricists as the product of the recombination of simple ideas (taken from experience)



into complex ideas—a mechanical process that hardly resembles the organic, *ex-nihilo* process of creation that Young associates with genius in his *Conjectures*.<sup>23</sup>

The empirical subtext of Richardson's interpolation conflicts with assumptions at the very heart of Young's essay, because the *Conjectures* are concerned with a power—genius—that *cannot* be acquired by experience. As Young puts it, “what, for the most part, mean we by Genius, but the Power of accomplishing great things without the means generally reputed necessary to that end?” (26). Skill acquired through experience and learning alone cannot be evidence of genius—indeed, it is precisely when experience and learning are absent that genius is most evident, and thus “to neglect of Learning, Genius sometimes owes its greater glory” (29). In short, genius is innate. Richardson's caveat therefore undermines Young's argument by suggesting that all literary creation must be rooted in experience.

It is not clear that Richardson (or even Young) fully perceived this conflict between the implicit empiricism of Richardson's caveat and Young's innatist conception of genius. Richardson's primary motive for qualifying Young's praise of genius must have been religious; perhaps he feared that impressionable readers might confuse genius with outright prophesy, an understandable concern given Young's sometimes inflated rhetoric.<sup>24</sup> But through his caveat, Richardson inadvertently drew the *Conjectures* into an epistemological debate between innatism and empiricism that had begun (in Great Britain) a century before, while simultaneously applying the terms

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<sup>23</sup> Locke does not use the term “mechanical” explicitly, but his theory of ideas has an atomistic quality that is more congenial to mechanistic than to organic metaphors.

<sup>24</sup> For a fuller discussion of the interactions between Richardson and Young, see Alan D. McKillop, “Richardson, Young, and the ‘Conjectures,’” *Modern Philology*, Vol. 22, No. 4 (May, 1925), 391-404.

of that debate to a specifically literary question: what is a literary work?

This chapter argues that a nearly identical debate unfolded in the courtrooms of mid-eighteenth-century Great Britain, and was applied to the very same question. This had become a legal question, in addition to a literary one, because its answer was of consequence in a series of mid-century lawsuits that, together with the Statute of Anne (1710), form the bedrock of modern Anglo-American copyright law. As critics and historians have long recognized, Locke's political philosophy played an important role in these lawsuits, offering a particular answer to the above question: a literary work, argued one side of the debate, is the product of an author's mental labor. What has been missed, and what I hope to show, is that Locke's *epistemology* played an equally important role, alongside that of his followers and their interlocutors. In their arguments supporting perpetual copyright protection, jurists such as William Blackstone explicitly referred to Locke's influential theory of property, most famously articulated in his *Second Treatise of Government*, but they also implicitly relied on the theory of ideas that Locke set forth in his *Essay Concerning Human Understanding*, and that fellow empiricists such as David Hume built upon through the course of the century.

Locke's theory of ideas was congenial to supporters of perpetual copyright—copyright maximalists—because it held that ideas arise exclusively from individual experience, challenging previous theories that had instead claimed that certain ideas are innate and universal. Nathanael Culverwel, one of a group of philosophers now known as the Cambridge Platonists, had argued in 1652 that there exists a “sacred Manuscript...

writ by the finger of God himself in the heart of man.”<sup>25</sup> Everyone possesses the ideas that populate this universal manuscript, and they are therefore poor candidates for private appropriation. Locke rejected this view, insisting that all ideas are private property from their very inception, at least in one key sense: they arise from the specific experiences of private individuals:

Let us then suppose the mind to be, as we say, white paper, void of all characters, without any ideas: How comes it to be furnished? Whence comes it by that vast store which the busy and boundless fancy of man has painted on it with an almost endless variety? Whence has it all the materials of reason and knowledge? To this I answer, in one word, from experience.<sup>26</sup>

In Locke’s theory, there is no “sacred Manuscript,” no universal codex from which ideas arise. All ideas are acquired through experience—or, in the philosophical cant of Locke’s day as well as our own, ideas are not innate but *adventitious*.<sup>27</sup> Therefore, to the degree that a work of literature is composed of ideas, we can find its radix in the private experience of nature. Or, to repeat the pithy phrase from Richardson’s caveat, an author “can give us only what by his own, or others eyes, has been seen.”

Copyright maximalists such as Blackwell used a Lockean theory of ideas to

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<sup>25</sup> Nathanael Culverwel, *An Elegant and Learned Discourse of the Light of Nature* (London: Printed by T. R. and E. M. for John Rothwell, 1652), *Early English Books Online*. Gale, 34.

<sup>26</sup> John Locke, *An Essay Concerning Human Understanding*, (Oxford: Oxford University Press, 1979), 108. Later references to this text are noted parenthetically.

<sup>27</sup> Descartes had used this terminology in his *Meditations on First Philosophy*, distinguishing between “innate,” “factitious,” and “adventitious” ideas—respectively, ideas that have always been within us, ideas generated by our imagination, and ideas acquired through our experience. These categories happen to correspond roughly to the three categories that Richardson invokes in his caveat: divine truth, chimerical inventions, and knowledge obtained by experience.

ground their arguments, and not surprisingly, their opponents tended to adopt a view of ideas more akin to Culverwel's. However, closer analysis shows that the alliance between copyright maximalism and Lockean empiricism was an uneasy one, as was the counteralliance between copyright minimalism and the Platonism of Culverwel, because neither side was able to fully explain what it might mean for an idea to be *communicated*. This chapter analyzes the complex interplay between these philosophical theories and the pragmatic legal arguments made by copyright maximalists and minimalists, arguing that the difficulties that confronted figures on both sides of the copyright debate ultimately arose from two fundamental questions: What is an idea? And what does it mean to communicate an idea?

To consider how copyright maximalists and their opponents answered the first question, I first take up the philosophical discourse around ideas in seventeenth- and eighteenth-century Britain, examining the views of the Cambridge Platonists and Locke's refutation. In the process, I show how Locke challenged the dogma that ideas are universally communicable, vitiating an important argument against perpetual copyright. I then analyze Edward Young's *Conjectures* to show how he attacks the very same argument, though in a very different way from Locke. In section two, I show the roles that Locke's and Young's positions played in *Tonson v. Collins*, the case in which "the basic shape of the literary-property debate was realized,"<sup>28</sup> limning the multiply divergent ways that jurists conjoined platonist and empiricist views of literary ideas. and arguing that copyright maximalists linked literary property to the

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<sup>28</sup> Mark Rose, *Authors and Owners: The Invention of Copyright*, Cambridge: Harvard University Press, 1993, 78.

incommunicable.<sup>29</sup>

### **Experience and its Contrary**

In 1739, David Hume wrote that “the principle of innate ideas... is now almost universally rejected in the learned world.”<sup>30</sup> As support for this sweeping claim, he offers one terse footnote: “See Mr. Locke; chapter of power.” That Hume felt he need only invoke Locke’s name with a vague citation<sup>31</sup> to prove his point suggests a widespread knowledge of Locke’s argument among Hume’s readers. However, this widespread knowledge did not, in fact, result in near-universal assent. The doctrine of innate ideas was commonplace prior to Locke’s rejection of it, and remained influential afterwards, especially among religious thinkers, who often used variations on the doctrine to defend the universality of moral judgments.<sup>32</sup>

The immediate historical precedent for this association between the doctrine of innate ideas and British religious thought can be found in the mid-seventeenth century, when a loose group of Cambridge-educated divines took up various forms of the doctrine as part of their turn away from Aristotelian scholasticism. Though they drew from a wide range of philosophical strains, including new developments in the

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<sup>29</sup> Readers familiar with current copyright law may find my emphasis on ideas misplaced given the importance of the dichotomy between idea and expression, especially in U S law. This objection does not directly affect my historical argument because the distinction between idea and expression was not fully articulated until the nineteenth century. However, as I turn my discussion towards current copyright law, I will address this objection by considering the ways information technology is increasingly rendering the difference between texts and large numbers both philosophically and legally insignificant, to defend the view that expressions are not ideas, then, one must take the position that large numbers are not ideas, a position difficult to square with any legally coherent definition of the term “idea.”

<sup>30</sup> *A Treatise of Human Nature*, (New York: Oxford University Press, 2000), 106

<sup>31</sup> “Of Power” is the subtitle of chapter twenty-one in book two of Locke’s *Essay Concerning Human Understanding*

<sup>32</sup> For examples see John Yolton, *A Locke Dictionary* (Cambridge, MA: Blackwell, 1993) 102

emerging sciences, they all partook of some variety of Neoplatonism, and among historians of philosophy, they are collectively known as the Cambridge Platonists.<sup>33</sup> Among the Cambridge Platonists were Benjamin Whichcote (1609–1683), Henry More (1617-87), Ralph Cudworth (1617-88), John Smith (1618-52) and Nathaniel Culverwell (1619-51), each of whom formulated some version of innatism in support of a rational theology. As John Smith put it in 1659, “there are some radical principles of knowledge... sunk into the souls of men,”<sup>34</sup> principles that can only be fully perceived and understood by those who “shut the eyes of sense, and open that brighter eye of our understandings. that other eye of the soul.”<sup>35</sup> For Smith, as for many of the other Cambridge Platonists, the inward sight of reason facilitated the individual pursuit of divine truth, which one might carry out independently of any worldly authority.

Though their primary motivation was theological, several of the Cambridge Platonists constructed sophisticated epistemological frameworks to support their arguments. Henry More, in *An Antidote Against Atheism* (1653), laid out a theory of innate knowledge that drew liberally from Plato. “There is an active and *actuell* Knowledge in a man,” More wrote. “of which... outward objects are rather the reminders then [sic] the first begetters or implanters.”<sup>36</sup> To elucidate this claim, he offers the following evocative metaphor:

Suppose a skillful *Musician* fallen asleep in the field upon the grasse,

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<sup>33</sup> Sarah Hutton, “Lord Herbert of Cherbury and the Cambridge Platonists,” *Routledge History of Philosophy Volume 5 British Philosophy and the Age of Enlightenment* (New York: Routledge, 1996), 16-34.

<sup>34</sup> John Smith, *Select Discourses by John Smith* (London: Rivingtons and Cochran, 1821), 16

<sup>35</sup> *Ibid.*, 19

<sup>36</sup> Henry More, *Major Philosophical Works*, ed. G. A. J. Rogers, Volume I (Dulles, VA: Thoemmes Press, 1997), 19-20

during which time he shall not so much as dream any thing concerning his musically faculty, so that in one sense there is no *actual skill* or Notion nor representation of any thing musical in him, but his friend sitting by him that cannot sing at all himself, jogs him and awakes him, and desires him to sing this or the other song, telling him two or three words of the beginning of the song, he presently takes it out of his mouth, and sings the whole song upon so slight and slender intimation: So the *Mind* of *man* being jogg'd and awakened by the impulses of outward objects is stirred up into a more full and cleare conception of what was but imperfectly hinted to her from external occasions; and this faculty I venture to call *actual Knowledge* in such a sense as the sleeping Musicians skill might be called *actual Skill* when he thought nothing of it.<sup>37</sup>

More plays on two meanings of “actual” here: the first is roughly synonymous with “real” or “enacted” as opposed to “possible” or “potential,” while the other is roughly synonymous with “active,” describing things that arise from action—as in the theological distinction between original sin and actual sin, the latter being the product of individual action. In the sense of “actual” that is opposed to “potential,” the sleeping musician does not have actual knowledge, only potential knowledge; but his knowledge is actual in that it is the product of mental activity, which occurs when the mind is “jogg’d and awakened” or “stirred up” by “outward objects.” These outward objects do

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<sup>37</sup> *Ibid*, 20-12.

not generate knowledge; they only activate it. To support this claim, More goes on to consider geometric figures such as circles and triangles, asking how it can be that we have knowledge of these figures if they do not exist in their perfect form anywhere in nature. The only possible answer, he concludes, is that our knowledge of these forms is innate, and precedes any experience of nature: “There are a multitude of *Relative Notions* or *Ideas* in the minde of Man, as well *Mathematical* as *Logicall*, which if we prove cannot be the impresses of any materiall object from without, it will necessarily follow that they are from the Soul her self, within, and are the naturall furniture of human understanding.”<sup>38</sup> More’s description of outward objects as the “reminders” of pre-existing knowledge, his metaphorical account of sleeping knowledge “jogg’d and awakened,” and his use of geometric figures as examples of this innate knowledge, each vividly recall arguments and metaphors found in Plato’s dialogues and writings—most notably in the *Meno*, in which Socrates attempts to demonstrate that “all learning is but recollection” by walking an untutored boy through a geometric proof. By the end of his demonstration, the youth understands the proof and agrees that it is valid, though Socrates has done nothing but ask him questions. Therefore, Socrates insists, “there have been always true thoughts” in the boy’s mind, which “only need to be awakened into knowledge.”

The metaphor of “sleeping” knowledge is especially important because it suggests that both More and Plato<sup>39</sup> are offering what historians of philosophy such as

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<sup>38</sup> *Ibid.*, 22.

<sup>39</sup> There is some doubt about whether the innatism of Plato’s *Meno* was indeed dispositional; see Glenn Rawson, “Platonic Recollection and Mental Pregnancy,” *Journal of the History of Philosophy*, 44:2



John Yolton have called a *dispositional* account of innateness, in which innate ideas are not immediately present to the mind, but are rather part of the mind's implicit structure, ready to be called forth by a particular set of circumstances, or through some active intellectual process. In More's own words, "I doe not mean that there is a certain number of *Ideas* flaring and shining to the *Animadversive faculty* like so many *Torches* or *Starres* in the *Firmament* to our outward sight, or that there are any *figures* that take their distinct places, & are legibly writ there like the *Red letters* or *Astronomical Characters* in an *Almanack*"; rather, there is "an active sagacity in the Soul, or quick recollection as it were, whereby some small business being hinted unto her, she runs out presently into a more clear and larger conception."<sup>40</sup> Philosophers have continued to find dispositional accounts of innateness persuasive from time to time, although the alternative form of innatism that More caricatures here – today called *occurrent* innatism – has more the quality of a straw man.<sup>41</sup>

In his day, More was perhaps the most widely-known of the Cambridge Platonists, but for evidence of their abiding influence in the eighteenth century, I turn to the work of Ralph Cudworth. Only one of Cudworth's major treatises was published during his lifetime, and his reputation was partially secured by posthumous works such as his *Treatise Concerning Eternal and Immutable Morality*, which was published in

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(April 2006), 137-155. Among the many difficult questions to consider is the following: does the category of "dispositional innatism" include those theories of innatism that hold that ideas that are not immediately present to consciousness, but are fully formed, or does it describe only theories of innatism that hold that some ideas are not yet fully formed, requiring further shaping by the mind?

<sup>40</sup> *Major Philosophical Works*, 20.

<sup>41</sup> G. A. J. Rogers notes that the innatism of the Cambridge Platonists anticipates assumptions that motivate the linguistic theories of Noam Chomsky; see "Locke, Plato and Platonism," *Platonism at the Origins of Modernity*, eds. Douglas Hedley and Sarah Hutton (Dordrecht, Netherlands: Springer, 2008), 203.

1731. The editor of the *Treatise*, Edward Chandler, wrote a preface positioning it as an important contribution to contemporary debates about ethical reasoning and moral certainty,<sup>42</sup> and like the work of other Cambridge Platonists, the *Treatise* supported its claims with an innatist epistemological framework. Cudworth also had a more intimate connection to eighteenth-century philosophy through his daughter Damaris, who was a philosopher in her own right as well as a close friend and correspondent of Locke's; during the years before the publication of *An Essay Concerning Human Understanding*, she and Locke discussed Smith's *Select Discourses* and other works by Cambridge Platonists.<sup>43</sup>

Cudworth's writings remained influential throughout the eighteenth and into the nineteenth century. In addition to the publication of the *Treatise*, Cudworth's *True Intellectual System of the Universe* was reprinted twice in the eighteenth century, and both works were translated into Latin for publication in Germany (1733, 1773) and disseminated throughout Europe. They were also reissued in Britain in 1845, just a few years after another of Cudworth's manuscripts was first published as *A Treatise of Freewill* (1838). This abiding interest in Cudworth's works suggests that epistemological innatism formed a significant and persistent undercurrent in the intellectual world of eighteenth-century Britain.

The innatism of Cudworth's *Treatise* is precisely stated; he largely discards the metaphorical language of Culverwel, Smith and More, opting instead for a somewhat

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<sup>42</sup> Sarah Hutton, "Introduction," in Ralph Cudworth, *A Treatise Concerning Eternal and Immutable Morality*, ed. Sarah Hutton, (New York: Cambridge University Press, 1996), xiv-xv.

<sup>43</sup> Rogers, *Platonism at the Origins of Modernity*. 198-200.

technical vocabulary. The soul possesses, as Cudworth repeats insistently, “an innate cognoscitive [i.e. cognitive] power... a power of raising intelligible ideas and conceptions of things from within itself.”<sup>44</sup> Cudworth is careful to avoid using the term “innate” to refer to ideas themselves; rather, the mind actively generates certain ideas through an innate *power*, which it can exercise without the aid of external stimuli. Cudworth’s formulation thus avoids certain ambiguities that attend More’s metaphor of the sleeping musician, in which innate ideas must be “jogg’d and awakened by the impulses of outward objects,” and in which, though they must be awakened, innate ideas are nonetheless all but fully formed beforehand, having been learned at some point in the past. Cudworth’s account is therefore both more fully innatist, in that external stimuli are not a prerequisite for the formation of innate ideas, and more fully dispositional, in that innate ideas do not exist at all in the mind before the exercise of the innate power that enables their formation.<sup>45</sup>

The works of the Cambridge Platonists provide much of the local historical context for Locke’s epistemological intervention.<sup>46</sup> His *Essay Concerning Human Understanding* comprised four books, the first of which was entirely devoted to a closely argued refutation of the doctrine of innate ideas, which he summarizes as the

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<sup>44</sup> Cudworth, *A Treatise Concerning Eternal and Immutable Morality*, 75. Later references to this text are noted parenthetically.

<sup>45</sup> Indeed, Cudworth’s account of innate ideas may be sophisticated enough to be considered a significant precursor to Kant’s epistemology. For a discussion linking other aspects of Cudworth’s philosophy to Kant’s, see Stephen Darwall, *The British Moralists and the Internal “Ought”: 1640-1740* (Cambridge: Cambridge University Press, 1995).

<sup>46</sup> Among Locke’s other interlocutors were René Descartes and Edward Stillingfleet, Bishop of Worcester. See Samuel Rickless, “Locke’s Polemic against Nativism,” *The Cambridge Companion to Locke’s “Essay Concerning Human Understanding,”* ed. Lex Newman (New York: Cambridge University Press, 2007), 33-66.

“Opinion amongst some Men, That there are in the Understanding certain *innate Principles*; some primary Notions, κοινὰ ἐννοιαὶ [Koinai ennoiai], Characters, as it were stamped upon the Mind of Man, which the Soul receives in its very first Being” (48). Locke’s language here calls to mind both Nathaniel Culverwel’s “sacred Manuscript... writ by the finger of God himself in the heart of man”<sup>47</sup> as well as those characters “legibly writ” in the mind that More disavows. In other words, Locke is describing an occurrent version of innatism, and it is against that form of innatism that his arguments are most successful.<sup>48</sup>

According to Locke, the fundamental argument in support of innatism is the argument “from Universal Consent”—the argument that “there are certain Principles... universally agreed upon by all Mankind” and that this universal agreement proves that these principles “must needs be the constant Impressions, which the Souls of Men receive in their first Beings” (49). Locke’s attack on this argument is twofold. First, he argues that the phenomenon of universal consent could only support innatism if innatists could show that no other explanation of universal consent is possible.<sup>49</sup> Second, in a rhetorically splendid inversion of his opponents’ argument, he insists that the argument from universal consent actually *defeats* innatism, because no example of universal consent exists, as innatism appears to require. In other words, if some principles are truly innate, then all people would necessarily agree with them; but not all people do, as Locke attempts to demonstrate with a copious array of counterexamples.

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<sup>47</sup> Culverwel, 34.

<sup>48</sup> As I will discuss later, there is an ambiguity in Locke’s argument, which he seems to recognize himself, that threatens to undermine the distinction between empiricism and dispositional innatism.

<sup>49</sup> This is, of course, Cudworth’s very approach, a fact that Locke neglects to mention.

For instance, at the beginning of his discussion, Locke observes that certain “speculative principles” (i.e. logical assertions) are not agreed with or even comprehended by “*Children, and Ideots*” (49). Later, Locke considers a set of “practical principles” (i.e. moral precepts) that, as he argues, some societies reject wholesale.<sup>50</sup>

By offering numerous precepts that seem as though they should be universally accepted, but are not, Locke builds a persuasive case against occurrent innatism. However, his arguments against dispositional innatism are more ambiguous, amounting more to a shift of attention from the universal to the individual—a shift that would later prove useful to copyright maximalists. Locke introduces his discussion of dispositional innatism by asserting that “to imprint any thing on the Mind without the Mind’s perceiving it, seems to me hardly intelligible... To say a Notion is imprinted on the Mind, and yet at the same time to say, that the mind is ignorant of it, and never yet took notice of it, is to make this Impression nothing” (49-50). The only way to avoid this contradiction, Locke claims, is to assert that “all Propositions that are true, and the Mind is capable ever of assenting to, may be said to be in the Mind... So the Mind is of all Truths it ever shall know.” But that is a deceptive use of language, or, in Locke’s terms, “a very improper way of speaking,” because it simply restates Locke’s own argument in different terms. This manner of speaking, Locke argues,

whilst it pretends to assert the contrary, says nothing different from

those, who deny innate Principles... If Truths can be imprinted on the

Understanding without being perceived, I can see no difference there can

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<sup>50</sup> For a nuanced discussion of this line of argument, see Daniel Carey, “Hutcheson’s Moral Sense and the Problem of Innateness,” *Journal of the History of Philosophy* 38.1 (2000), 103-110.

be, between any Truths the Mind is capable of knowing in respect of their Original: They must all be innate, or all adventitious: In vain shall a Man go about to distinguish them. (50)

For Locke, the difference between any coherent dispositional innatism and Locke's own empiricism appears to reduce to a mere difference of terminology.<sup>51</sup>

This line of reasoning forms the backbone of a number of Locke's arguments against specific versions of dispositional innatism; in each case, Locke argues that to be coherent, innatism must erase important distinctions in a self-defeating way. It is beyond the scope of this chapter to discuss all of them in turn, but I will consider two brief examples to show the ambiguity implicit in Locke's argument. The most characteristic of the arguments for innateness that Locke attacks is the position that some principles are innate because "by the *Use of Reason* men may discover these Principles" (51)—an acceptable, if simplistic, approximation of the various forms of rationalism adopted by the Cambridge Platonists. Locke objects that if we hold that "whatever Truths Reason can certainly discover to us, and make us firmly assent to, those are all naturally imprinted on the Mind," then we can admit "no difference between the Maxims [i.e. axioms] of the Mathematicians, and Theorems they deduce from them: All must be equally allow'd innate" (51). In other words, the view that ascribes innateness to any idea or precept discoverable by reason quashes an important distinction between given and derived knowledge. Another of Locke's arguments

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<sup>51</sup> In the Preface to his *New Essays on the Understanding*, Locke's contemporary G. W. Leibniz takes a related position, insisting that Locke's use of the term "reflection" was equivocal. See his *Philosophical Essays*, trans. Roger Ariew and Daniel Garber (Cambridge: Hackett, 1989) p. 291-305.

considers the position that some precepts are innate because “they are generally *assented to, as soon as proposed*, and the Terms they are propose’d in, understood” (56); but because this is true of statements such as “*Yellowness is not Sweetness*” (57), Locke argues that this requires us “to suppose all our *Ideas* of Colours, Sounds, Tastes, Figures, *etc.* innate” (58), a position Locke views as manifestly absurd, since such ideas are paradigmatic examples of adventitious ideas for Locke.

The problem for both of these arguments is that many of Locke’s opponents are happy to adopt the positions that he ascribes to them. In answer to Locke’s objection that rationalist innatism renders axioms and theorems equally innate, one could point out that Socrates takes that very position in Plato’s *Meno*; he intends his conversation with the boy to demonstrate the innateness of a *theorem* of geometry. The Cambridge Platonists followed Plato’s lead in this respect, as did other seventeenth-century philosophers: as Samuel Rickless observes, “all of Locke’s dispositionalist opponents (including most notably Descartes) took for granted (and not unreasonably) that the innateness of mathematical axioms entails the innateness of mathematical theorems.”<sup>52</sup> Similarly, the position that ideas of color, sound, taste, and the like are innate, which Locke considers untenable, is just the position that Ralph Cudworth takes in his *Treatise*:

the soul having an innate cognoscitive power universally... it must needs be granted that it hath a potential omniformity in it... The mind being a kind of notional or representative world, as it were a diaphanous and

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<sup>52</sup> Rickless, 44.

crystalline sphere, in which the ideas and images of all things existing in the real universe may be reflected or represented.”

These omniform minds “have not the actual ideas of all things... yet they have them all virtually and potentially comprehended in that one cognoscitive power” (77). The innateness of this representational “omniformity” immediately entails that the content of sense impressions must also be considered innate, for otherwise, experience would be required to achieve this omniformity, and it would no longer be innate at all.<sup>53</sup> This passage from Cudworth also serves as an answer to Locke’s primary objection that if we consider dispositional innatism to be a coherent position, then ideas must “all be innate, or all adventitious.” According to both Locke *and* Cudworth, dispositional innatism is precisely the view that (in Locke’s words) “the Mind is of all Truths it ever shall know” (50). Such omniformity is for Cudworth the very essence of mind. Worse for Locke, we could imagine Cudworth responding that in Locke’s theory, *all* ideas are adventitious, and therefore his theory falls prey to the very same critique that he levels against dispositional innatism. Like Cudworth’s, Locke’s account of ideas eliminates the distinction between innate and adventitious ideas entirely by claiming that there is only one kind of idea.

These structural parallels between Cudworth’s position and Locke’s lend some

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<sup>53</sup> As Cudworth loquaciously puts it, the mind contains a “potential omniformity whereby it is enabled as occasion serves and outward objects invite, gradually and successively to unfold and display itself in a vital manner, by framing intelligible ideas or conceptions within itself of whatsoever hath any entity or cogitability.” In other words, anything that exists or is possible—“whatsoever hath any entity or cogitability”—can be represented by the mind. Cudworth sees a kinship between this potential omniformity and the biological mechanisms of reproduction, which actualize structures that are latent within all living things. “As the spermatoc or plastic power doth virtually contain within itself, the forms of all the several organical parts of animals, and displays them gradually and successively, framing an eye here and an ear there” (77)



credence to the notion that their positions are indeed opposite but equal, and that the difference between them is simply one of terminology. And yet that difference makes a difference for Locke: as he puts it, dispositional innatists have adopted “a very improper way of speaking,” one that introduces discord where there is none. This is a perplexing claim given that Locke is, philosophically speaking, the newcomer on the scene—surely *he* is the one introducing discord. Locke appears to fault his opponents for a difference in terminology that he himself introduced. I argue that Locke took this somewhat strained rhetorical stance because he wished to place greater emphasis on the active role of individual minds in the formation of ideas. Cudworth and other Cambridge Platonists often spoke of the active nature of mind; but as religious thinkers hoping to establish a stable foundation for theology in a time of often violent religious strife, they were far more concerned with demonstrating what they saw as the *universal* aspects of ideation and cognition. Locke sought to change the focus of epistemological inquiry by underscoring the importance of what one might call the private mental labor of individuals—a concept that would come to be vital for copyright maximalists.<sup>54</sup>

Two passages in the first book of the *Essay* clearly show Locke’s concern with mental labor. He initially raises the issue in the midst of an argument against the view that ideas discoverable by reason are innate. Holders of this view, he claims,

Will not be forward to affirm, That the Knowledge of the Maxim, *That it is impossible for the same thing to be, and not to be*, is a deduction of our Reason. For this would be to destroy that Bounty of Nature, they seem so

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<sup>54</sup> As I discuss later, Locke did not use that exact phrase, and there is reason to doubt that Locke would have approved of maximalists’ use of the term labor to justify perpetual copyright.

fond of, whilst they make the Knowledge of those Principles to depend on the labour of our Thoughts. For all Reasoning is search, and casting about, and requires Pains and Application. And how can it with any tolerable sense be suppos'd, that what was imprinted by Nature, as the Foundation and Guide of our Reason, should need the Use of Reason to discover it? (52)

In an argument that calls to mind discussions of private property in his *Second Treatise of Government*, Locke draws a sharp contrast between ideas acquired by individual pains and labor, and ideas acquired through the bounty of nature—a kind of cognitive commons. The claim that ideas developed through reason are merely part of this natural bounty ignores the essential contribution of individual labor to their development. In a discussion of mathematical reason a few pages later, Locke implicitly raises the same issue. For the innatist, he argues,

all Mathematical Demonstrations as well as first Principles, must be received as native Impressions on the Mind: which, I fear they will scarce allow them to be, who find it harder to demonstrate a Proposition, than assent to it, when demonstrated. And few Mathematicians will be forward to believe. That all the Diagrams which they have drawn, were but Copies of those innate Characters, which Nature had ingraven upon their Minds (60).

Locke does not explicitly refer to pains or labor in this passage, but he foregrounds the difficulty of generating mathematical proofs and contrasts that difficulty with the ease

of understanding a given proof. This contrast between ease and difficulty runs parallel to the above contrast between ideas produced by labor and ideas given by nature, and Locke's line of reasoning in both cases is roughly the same: the doctrine of innate ideas obscures the fact that individual mental labor is necessary for the formation of ideas. Although Locke does not directly explain why mathematicians would be unwilling to believe that their diagrams are simply copies of "innate Characters," the implication is clear enough: such claims diminish the value of mathematicians' work, since they suggest that generating proofs involves no more labor than understanding them.

The above passages show Locke associating the doctrine of innate ideas with a kind of intellectual laziness, a slothful conviction that some ideas require no work to develop, and no effort to defend. Locke maintains this association throughout the remainder of the essay, although it never again takes so central a role in his argument. Instead, Locke embeds it in a series of rhetorical flourishes, through which he repeatedly implies that his opponents shirk the intellectual labor that Locke and his sympathetic readers virtuously undertake. This rhetorical strategy is visible from the first paragraph of the essay: "The Understanding," Locke suggests, "like the Eye, whilst it makes us see, and perceive all other Things, takes no notice of it self: And it requires Art and Pains to set it at a distance, and make it its own Object" (43). A few pages later Locke directly accuses his opponents of laziness, stating that they "take not the pains to examine even what they themselves say" (51); twice afterwards, he reemphasizes the virtuous diligence of those who "take the Pains" (52, 58) to carefully observe and reflect upon mental processes. These rhetorical touches culminate in the

claim, at the end of Book One, that the doctrine of innate ideas arose precisely because “it eased the lazy from the pains of search, and stopp’d the enquiry of the doubtful, concerning all that was once stiled innate” (101). Related assertions appear throughout the following three books of the essay.<sup>55</sup>

Truth is not the only casualty of such laziness. Locke insists at the end of Book One that “we may as rationally hope to see with other Mens Eyes, as to know by other Mens Understandings. So much as we our selves consider and comprehend Truth and Reason, so much we possess of real and true Knowledge” (101). But the effect of the doctrine of innate ideas and principles upon its followers is “to take them off from the use of their own Reason and Judgment, and put them upon believing and taking them [i e. purportedly innate principles] upon trust, without farther examination: In which posture of blind Credulity, they might be more easily governed” (102). In addition to being false, then, the doctrine of innate ideas has pernicious political effects, enabling those with “the Authority to be the Dictator of Principles, and Teacher of unquestionable Truths... to make a Man swallow that for an innate Principle, which may serve to his purpose, who teacheth them” (102).<sup>56</sup> Here, Locke recognizes a direct connection between structures of power and structures of knowledge, and suggests that his epistemological framework protects against abuses by privileging, over all other sources of knowledge, the private mental labor of individuals.

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<sup>55</sup> “Any one may easily observe this in his own Thoughts, who will take the pains to reflect on them” (147), see also 181, 291, 596, 650

<sup>56</sup> What Locke does not mention is that his rhetorical references to the “pains” of reflection achieve a similar result. Anyone who does take the necessary pains will inevitably perceive the phenomena of which he speaks, and therefore anyone who does not perceive them must not be putting in enough reflective effort. Locke’s position is more compatible with the Protestant ethic than the innatist position, but it does not entirely equalize the asymmetric power relation between Locke and his readers.

The following books of Locke's essay offer an exceptionally detailed account of how ideas arise in the minds of individuals. Locke offers what has been described as a "corpuscular" or atomic theory of ideas, in which simple ideas, which are the direct and indivisible products of experience, combine to form complex ideas – compounds formed of simpler elements – which Locke further taxonomizes. Locke also subdivides experience into two "Fountains of Knowledge, from whence all the *Ideas* we have, or can naturally have, do spring" (104), which he names "sensation" and "reflection." Sensation denotes experience of the physical world through the senses, while reflection denotes what might be called inward experience – the perception of one's own mental processes.

The claim that all ideas arise from either sensation or reflection has an important ramification for any discussion of copyright: ideas are strictly private. This immediately follows from the fact that one can only directly access one's own sensory experiences, and one can only reflect on one's own mental processes (since the experience of others' mental processes can only be had through sense perception). That ideas are private leads Locke to some unusual conclusions about language, conclusions that Locke hints at early in his discussion of ideas, saying "if it should happen that any two thinking men should really have different ideas, I do not see how they could discourse or argue one with another" (180). According to Locke, no ideas are communicated by language at all; he elucidates this position at length later in the Essay.

Where does this leave the notion of communication? The concept of innate ideas provided the Cambridge Platonists with a ready-made theory of communication, a

theory that seemed so straightforward and obvious that they hardly needed to articulate it at all.<sup>57</sup> Innate ideas expedite the construction of linguistic infrastructures, giving speaker and writer, listener and reader access to the same cognitive scaffolding. To understand the meaning of a text, readers need only seek within themselves the ideas under discussion; the ideas remain the same, no matter whose mind they appear in. But perhaps this theory of communication is *too* strong: if everyone already has access to exactly the same ideas, then why is communication necessary at all? Keeping in mind Locke's emphasis on the labor required to produce ideas, one might argue that communication is necessary precisely because some ideas are not really innate.

If the Platonists' theory of communication was too strong, perhaps Locke's was too weak. His rejection of the universality and innateness of ideas suggested that communication is not as straightforward a process as his precursors had assumed, and at times in the *Essay*, he even doubts the possibility of communication. He does eventually offer an account of communication based on universal ideas, but these ideas are universal not in a necessary, but only in a practical, sense: their universality is predicated on the assumed uniformity of human experience and human physiology. Should parties to a conversation have different ideas, whether because they have radically different experience, or radically different physiology, that universality fails. and with it fails any attempt at meaningful communication.

These were central issues for eighteenth-century copyright law because cases

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<sup>57</sup> As Hannah Dawson explains, Locke's "contemporaries had their own internally coherent accounts of how communication works, but they never struggled to formulate them" because "the issue seemed so obvious and uncontroversial" (619). Dawson provides a particularly lucid analysis of Locke's (at time implicit) theory of communication in "Locke on Private Language," *British Journal for the History of Philosophy*, 11 4, 609-637.

such as *Tonson v. Collins* and *Millar v. Taylor* turned on the question of what a book communicates from author to reader—and what a book does not communicate. The term “communicate” comes from the Latin *communicare*, to make common; to succeed in court, then, copyright maximalists had to argue for a failure of communication, a sense in which the publication of ideas does *not* make them common. Locke’s account of ideas appears more congenial to copyright maximalism than the Cambridge Platonists’ account insofar as it theorizes the possibility of communicative failure; and for that reason, I will argue later in this chapter, copyright maximalists took the Lockean view. However, I first want to underscore that turning to Locke was not the only option copyright maximalists had. It was also possible to imagine a version of innatism that entails a similar communicative failure: the innatism that Edward Young espoused in his *Conjectures*.

### **The Innateness of Genius**

Young’s *Conjectures on Original Composition* has often been regarded as a seminal text in the history of authorship. Through his articulations of the notions of originality and genius, Young influenced the course of romanticisms in both Great Britain and Germany, and in doing so, he strengthened the case for authorial copyright. As Martha Woodmansee has argued, ideas popularized by Young’s essay (which was translated into German the year of its publication) bolstered a growing demand for copyright legislation among German authors of the romantic era.<sup>58</sup> Likewise, Mark

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<sup>58</sup> “The Genius and the Copyright: Economic and Legal Conditions of the Emergence of the ‘Author.’”

Rose finds Young's thoughts congenial to the ascent of proprietary authorship in Great Britain, insofar as they anticipate "the organic analogy of the romantics."<sup>59</sup> Crucially, both Rose and Woodmansee associate Young with copyright law by reading the *Conjectures* as a proto-romantic text, and hence both their arguments must re-contextualize Young's essay geographically or temporally. When one reads the *Conjectures* in the immediate context of its publication, however, a very different picture of Young's relation to copyright emerges. Forty years before Wordsworth took up the "organic analogy" at the heart of Young's essay, the *Conjectures* read not as a proto-romantic text, but as a *post-platonic* text—a modulated continuation of ideas that Cudworth and other Cambridge Platonists had developed and defended a century before. In short, Young was an innatist.

The linchpin of Young's innatist argument in the *Conjectures* is an analogy between the concept of genius and the concept of *conscience*, a term that literally denotes inward knowledge, and that in the early-to-mid eighteenth century was at the center of a dispute over the innateness of the faculty of moral judgment.<sup>60</sup> As late as 1744, Jonathan Swift had insisted that conscience "properly signifies the Knowledge which a Man hath within himself of his own Thoughts and Actions" and that such knowledge is useless for the purposes of moral *judgment* unless supplemented by the

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*Eighteenth-Century Studies* 1983-84, 430. See also M. H. Abrams, *The Mirror and the Lamp* (Oxford: Oxford University Press, 1953).

<sup>59</sup> "The Author as Proprietor: *Donaldson v. Becket* and the Genealogy of Modern Authorship," *Representations* 23 (Summer 1988), 61.

<sup>60</sup> For a fuller analysis of Young's analogy between genius and conscience, see D. W. Odell, "The Argument of Young's 'Conjectures on Original Composition,'" *Studies in Philology* 78.1 (1981), 87-106.



study of scripture.<sup>61</sup> Swift's quasi-empirical stance here allies him with Locke and puts him at odds with followers of the Cambridge Platonists such as Joseph Butler and Anthony Ashley-Cooper, Third Earl of Shaftesbury, both of whom viewed conscience as an innate faculty of moral judgment.<sup>62</sup> By the time Young wrote his *Conjectures*, the term had become more firmly associated with Shaftesbury and Butlers' anti-empirical view of conscience, and Young uses the term accordingly: "With regard to the Moral world, *Conscience*, with regard to the Intellectual, *Genius*, is that God within. Genius can set us right in Composition, without the Rules of the Learned; as Conscience sets us right in Life, without the Laws of the Land" (30-31). Conscience is "that God within," fully present in individuals before they learn institutional rules, and at times perhaps even opposed to those institutional rules. By characterizing conscience as a faculty that guides us "without the Laws of the Land," Young echoes Shaftesbury's critique of the claim, made famous by Thomas Hobbes, that the state is the only guarantor of individuals' moral behavior. Conscience, for both Young and Shaftesbury, precedes and underwrites institutions of law; and likewise, Young insists, *genius* precedes institutions of learning.

Young's conception of genius also resembles Shaftesbury's conception of conscience in that both are threatened by other kinds of acquired knowledge. For some

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<sup>61</sup> "On the Testimony of Conscience," *Three Sermons* (London, 1744), rpt. in *Eighteenth Century Collections Online*, Gale. (CB3332553113), 24.

<sup>62</sup> Shaftesbury's views on this subject were plainly influenced by the Cambridge Platonists; he published a preface to a collection of Benjamin Whichcote's sermons in 1698, and adopted some of Whichcote's terminology in his own writing. Francis Hutcheson attempted to bridge the empiricist and innatist positions by describing a "moral sense" quite comparable to the other five senses. For more on Shaftesbury, Hutcheson and Locke, see Daniel Carey, "Hutcheson's Moral Sense and the Problem of Innateness," *Journal of the History of Philosophy* 38.1 (2000), 103-110.

forms of “infantile genius,” Young says, learning must be

Nurse, and Tutor; but this Nurse may overlay with an indigested Load,  
which smothers common sense; and this Tutor may mislead, with  
pedantic Prejudice, which vitiates the best understanding: As too great  
admirers of the Fathers of the Church have sometimes set up their  
Authority against the true Sense of Scripture; so too great admirers of the  
Classical Fathers have sometimes set up their Authority, or Example,  
against Reason. (32)

Through the organic metaphor of a nursing child, Young argues that the impositions of learning and authority may turn the development of genius awry, just as the authority of institutions can derail moral, religious and rational judgment. These institutions, born of imitation, go against nature:

by a spirit of *Imitation* we counteract Nature, and thwart her design. She  
brings us into the world all *Originals*: No two faces, no two minds, are  
just alike; but all bear Nature's evident mark of Separation on them. Born  
*Originals*, how comes it to be that we die *Copies*? That meddling Ape  
*Imitation*, as soon as we come to years of *Indiscretion* (so let me speak),  
snatches the Pen, and blots out nature's mark of Separation, cancels her  
kind intention, destroys all mental Individuality. (42)

Maintaining his extended analogy between conscience and genius, Young puns on the term discretion, which may refer either to judgment about right behavior or to the act of distinguishing or discerning, as between writers. And here again, Young's argument

calls to mind arguments by Shaftesbury, such as his assertion that “false Imagination of Right and Wrong... can proceed only from the force of custom and Education in opposition to Nature,” as when by “Custom or politick Institution, certain Actions naturally foul & odious are repeatedly view’d with Applause.”<sup>63</sup> Following the lead of Shaftesbury and his Platonist precursors, Young associates the innate knowledge granted by conscience and genius with the bounty of nature, which is threatened by artificial institutions such as church and state.

In addition to being innatist, Young’s conception of genius is *dispositionalist*. A writer “may possess dormant, unsuspected abilities,” a fact which “is evident from the sudden eruption of some men, out of perfect obscurity, into public admiration, on the strong impulse of some animating occasion; not more to the world’s great surprize, than their own.” (50). Genius hides its gifts, in the manner of More’s sleeping musician, “till awakened by loud calls, or stung up by striking emergencies” (50). Until then, a writer may remain “scarce less ignorant of his own powers, than an Oyster of its pearl, or a Rock of its diamond” (49-50). Like his philosophical precursors, Young preempts any argument that genius must not be innate because it is not apparent from birth. Genius need not be visible to be present.

Just a few pages later, however, the difference between Young’s innatism and the innatism of Shaftesbury and the Cambridge Platonists becomes more apparent. The Cambridge Platonists had held that innate ideas were not only innate, but also universal; similarly, Shaftesbury insisted that “Sense of Right and Wrong” is a “first Principle in

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<sup>63</sup> *Characteristicks, of Men, Manners, Opinions, Times* (London, 1733), rpt. in *Eighteenth Century Collections Online*, Gale (CW3305573821), 45-46.

our Constitution & Make” (44), and argued that the universality of conscience facilitates a natural process of community formation. But crucially for Young, genius does not unite individuals into a community; genius creates *distinctions* between individuals. Moreover, genius is not universal: “Let thy Genius rise,” he commands—“(if a Genius thou hast)” (53). Not all writers have genius, and for that reason a significant portion of Young’s essay is dedicated to the problem of discovering whether one has genius or not. Combined with Young’s dispositionalism, the belief that not all writers have genius generates a kind of belletristic Calvinism; genius may emerge without prior indication, leaving the would-be writer of genius to constantly seek signs of his or her place among the literary elect. “*Know Thyself*... Dive deep into thy bosom” exhorts Young, and “learn the depth, extent, bias, and full fort of thy Mind” (53); and if genius is to be found there, “Thyself so reverence as to prefer the native growth of thy own mind to the richest import from abroad” (54). But this holds only if one does indeed have genius: “as nothing is more easy than to write originally wrong; Originals are not here recommended, but under the strong guard of my first rule—*Know thyself*” (61). Without the support of genius, originality is a handicap, a literary vice.

It is in the context of this stark divide between literary haves and have nots that Young links genius most visibly to *property*. The writer of genius who reverences himself. Young asserts,

will soon find the world’s reverence to follow his own. His works will stand distinguished; his the sole Property of them; which Property alone can confer the noble title of an Author: that is, of one who (to speak

accurately) *thinks*, and *composes*; while other invaders of the Press, how voluminous, and learned soever, (with due respect be it spoken) only *read*, and *write*. (54)

This passage marks a critical shift from the universalist innatism of the Cambridge Platonists to an exclusionary innatism—a novel version of Platonism that is uniquely suited to form the basis of a property claim. One of the hallmarks of property, as Joseph Yates would insist a decade later in the milestone copyright case *Millar v. Taylor* (1769), is that it grants “*sole and exclusive Enjoyment*” (73) of an object. But if ideas are both innate and universally held—even if only potentially—then such exclusive enjoyment is contrary to their very nature. Young’s theory of genius bypasses this problem, articulating a proprietary Platonism in which certain ideas are indeed exclusively possessed. Certainly anyone can imitate a work of genius, but such imitation amounts to nothing more than a loan; “Learning is borrowed knowledge,” while by contrast, “Genius is knowledge innate, and quite our own” (36). This incommensurable gap between imitation and creation means that the “noble title of an Author” is non-transferable, a fact that Young reiterates through another organic metaphor: “An *Original* author is born of himself, is his own progenitor, and will probably propagate a numerous offspring of Imitators, to eternize his glory; while mule-like Imitators, die without Issue” (68). Imitators are the sterile products of an illegitimate union, and when they pass away, any ideas of their own die with them.

Young’s proprietary Platonism stands in stark opposition to many of Locke’s ideas. For example, Locke’s critique of innatism as a product and propagator of

intellectual laziness applies to Young's arguments about genius just as well as it does to any of the Cambridge Platonists' arguments about "*actuall Knowledge*" or "innate cognoscitive power." But despite their differences, Young and Locke agree that at least some kinds of ideas are exclusively held by the mind that creates them, and are strictly non-transferable—or, one might say, *incommunicable*. To be sure, ideas are incommunicable in their accounts for very different reasons; but both of their accounts hold out the possibility that authors retain something when they communicate a work. That possibility of retention formed the basis of the property claim that William Blackstone and his allies made in mid-century copyright cases.

### **Property and Incommunicability**

In April and May of 1759, banker and bookseller Benjamin Collins printed, published and sold copies of Joseph Addison and Richard Steele's *The Spectator*. Collins was not the copyright holder; the elder Jacob Tonson had purchased copyright in the work forty-seven years previously, in 1712. But since the only applicable copyright statute, the Statute of Anne (1710), protected works for a maximum of twenty-eight years, Collins could not be prosecuted under it; as far as the Statute was concerned, the work had effectively entered the public domain. Nonetheless, the younger Jacob and his brother Richard, inheritors of the elder Tonson's estate, brought a suit against Benjamin Collins, claiming that Collins had invaded his literary property. The Tonsons' counsel argued that they retained copyright in *The Spectator* despite the limited term of the Statute: copyright, far from being the temporary consequence of a

statutory monopoly, was *literary property* in the fullest sense.<sup>64</sup> Like any other property, they argued, it was protected in perpetuity by the common law, independent of any statute, and was recognized not only by ancient usage, but also by reason and natural right.<sup>65</sup>

The plaintiffs' counsel in *Tonson v. Collins* were not the first to make such an argument, nor did the case set any lasting precedent; the Court of King's Bench refused to consider the case further after finding that the plaintiffs and defendant were colluding in an effort to set a precedent favorable to themselves and their fellow booksellers in the London trade.<sup>66</sup> Nonetheless, it was a case of historical significance because it featured two figures who would later participate in the precedent-setting cases *Millar v. Taylor* (1769) and *Donaldson v. Beckett* (1774). The first, William Blackstone, who would soon publish his influential *Commentaries on the Laws of England* (1765), was again counsel for a London bookseller in *Millar v. Taylor*, and would defend literary property before the House of Lords as one of twelve advisory judges in *Donaldson v. Beckett*. The second, Joseph Yates, would take a place on the Court of King's Bench and write the dissenting opinion in *Millar v. Taylor*, setting forth a critique of literary property that remains salient after more than two hundred years.

The case was heard twice, in 1761 and 1762, before the Court of King's Bench,

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<sup>64</sup> At times in the eighteenth century the terms "literary property" and "copyright" or "copy-right" were used interchangeably. For clarity, however, throughout the remainder of this dissertation I use "copyright" to refer to all forms of copyright, while using "literary property" to refer only to common law copyright.

<sup>65</sup> Ronan Deazley provides an excellent account of *Tonson v. Collins* in *On the Origin of the Right to Copy* (Portland, Oregon: Hart Publishing, 2004), 142-147. See also Rose, *Authors and Owners*,

<sup>66</sup> As Justice Willes would later remark in *Millar v. Taylor*, "upon certain information received by the Judges, 'that the whole was a collusion, and that the defendant was nominal only and the whole expence paid by the plaintiff,' they refused to proceed" (4 Burr. 2327).

with Lord Mansfield presiding as Chief Justice. Alexander Wedderburn argued on behalf of the plaintiffs for the first hearing, and attempted to restrict the property claim of authors to the profits of publication. This was, he claimed, an incorporeal property right, but only in the sense that, for example, the right of way across a tract of land is incorporeal; such incorporeal rights in corporeal entities were by this time fairly well-established in the common law.<sup>67</sup> “When I speak of the Right of Property,” declared Wedderburn, “I mean in the Profits of his Book; not in the Sentiments, Stile, &c.”<sup>68</sup> Wedderburn was clearly hoping to sidestep the argument that “sentiment” and “style” are incorporeal, impossible to possess exclusively, and therefore incapable of supporting any property right whatsoever. However, when the case was heard a second time in 1762, William Blackstone took Wedderburn’s place and made a much bolder claim. Not content to sidestep the argument that sentiment and style are incorporeal and impossible to possess, Blackstone directly attacked it. Quoting Edward Thurlow, the barrister who had argued for the defendants in 1761, Blackstone insisted that “‘A literary Composition, as it lies in the Author’s Mind, before it is substantiated by reducing it into Writing,’ has the essential Requisites to make it the Subject of Property.”<sup>69</sup> To support this claim, Blackstone famously referred to Locke’s *Second Treatise of Government* and the theory of property articulated therein: property commences with invention and labor, and both are required to produce “an original Composition” since

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<sup>67</sup> Wedderburn used the example of *advowson*, the heritable and transferable right to appoint clergymen within a particular parish

<sup>68</sup> *Tonson v Collins* (1761), *Primary Sources on Copyright (1450-1900)*, eds L Bentley and M Kretschmer (www.copyrighthistory.com), 302

<sup>69</sup> *Tonson v Collins* (1762), *Primary Sources on Copyright (1450-1900)* eds L Bentley and M Kretschmer (www.copyrighthistory.com), 322. Later references to this text are noted parenthetically



“*Original (ex vi termini)* implies Invention; as *Composition* does, Industry, and Labour.” Furthermore this property “may with equal Reason be acquired by *mental*, as by *bodily* Labour” (321) because there is the “Same Right of Occupancy in Ideas as in a Field, a Tree, or a Stone” (322). In short, Blackstone finds a perfect analogy between the labor of the body and of the mind, and based on that analogy, argues that the products of both kinds of labor are, by reason and natural right, the private property of their producers.

After making two additional arguments of dubious soundness,<sup>70</sup> Blackstone returns to the question of how a purely ideal entity could become property. While a literary composition

lies dormant in the Mind, it is absolutely in the Power of the Proprietor. He alone is intitled to the Profits of communicating, or making it public. The first Step to which, is cloathing our conceptions in Words, the only Means to communicate abstracted Ideas. Ideas drawn from external Objects, may be communicated by external signs; but Words only, demonstrate the genuine Operations of the Intellect. (323)

In this passage, the philosophical assumptions that underlie Blackstone’s argument immediately become clear. Specifically, Blackstone’s distinction between “Ideas drawn from external Objects” and “abstracted Ideas” parallels the dichotomy developed by Locke and widely deployed in his *Essay on Human Understanding* to explain how

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<sup>70</sup> Blackstone reiterates Wedderburn’s earlier claims that, first, individuals would not sow, reap, or write literary texts without the incentives provided by property, and that, second, where there is value, there is necessarily property. Ronan Deazly rightly characterizes both arguments as “logically spurious” (142).

abstractions such as numbers or geometrical forms can arise from sense impressions. That parallel alone indicates that Blackstone was drawing not only from Locke's political theory, but also from his epistemological theory. But more generally, this passage shows that Blackstone cannot be thinking of ideas in a platonic way. The very notion that ideas in the mind are "absolutely in the Power of the Proprietor" directly contradicts any theory holding ideas to be universal and innate. Even if an idea is immediately present in just one mind, the mind of the so-called "proprietor," a dispositional form of platonism would hold that it is *potentially* present in the minds of all others; the "proprietor" could do *nothing* to prevent any of them from acquiring it on their own. Blackstone therefore must have been working with an anti-platonic view of ideas, and based on his implicit use of Locke here, we can conclude that he was probably thinking of ideas from an empirical standpoint.

For Blackstone, then, ideas are the product of individual experience and mental labor—in the Lockean sense identified above—and the right of property in ideas arises naturally from that fact.<sup>71</sup> This interpretation of Blackstone's argument is further supported by a subtle shift in his diction through the course of his first argument. Through the beginning of the argument, the word he uses most often to refer to mental objects is "idea," but as he continues, he begins to favor to another term: "sentiment." Two paragraphs after asserting that we communicate by "cloathing our conceptions in Words, the only Means to communicate abstracted *Ideas*" (323, italics mine) he performs a nearly parallel substitution: "Words are the Vehicle of *Sentiments*" (323,

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<sup>71</sup> Locke himself would not have approved of this line of reasoning. Locke explicitly denounced perpetual copyright protection of any kind; see Deazley, 3-4.

italics mine). He then insists that sentiment is the essence of literary property, stating that “The Sentiment therefore is the Thing of Value, from which the Profit must arise” (323-4) though just a few paragraphs earlier he had argued that literary property is founded on “Occupancy in Ideas” (321). Blackstone appears to be using the words “idea” and “sentiment” interchangeably; but to treat the two terms as mere synonyms misses an important distinction.<sup>72</sup> When one examines the etymology of the two words, Blackstone’s shift appears strategic: the term “sentiment” is based on the same Latin root as the term “sense,” and in the eighteenth century was still occasionally used to refer to sense impressions. In his *Enquiry Concerning Human Understanding* David Hume used “inward sentiment” and “outward sentiment” to refer to roughly the same concepts that Locke had called “reflection” and “sensation,” thus associating the term “sentiment” with private experience. At the same time, the term “sentiment” was increasingly being associated with a particular register of private experience, *feeling*—that is to say, with affect, sensibility, and a particular kind of refined subjectivity.<sup>73</sup> Both associations link the term to the personal and private. By contrast, the etymological root of “idea” is the Ancient Greek *ἰδέα*, a term Plato had used to denote eternal forms. Insofar as it was linked to a philosophical tradition claiming that all mental objects are held in common, “idea” was a troublesome word for Blackstone, and he learned quickly to eschew it.

The correspondence between Blackstone’s account of ideas and Locke’s is

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<sup>72</sup> Mark Rose argues that Blackstone uses the terms interchangeably at first, but points out that in his second argument rebutting Joseph Yates, he seems to use the term in a subtly different way, linking it to “style” in a way that resembles the modern notion of “expression” (Authors and Owners 89).

<sup>73</sup> Consider, for example, Laurence Sterne’s *A Sentimental Journey Through France and Italy*, published just a few years later, in 1767.

close; but it is not perfect. Most notably, Blackstone speaks of ideas being communicated, whereas for Locke, communication may occur, but ideas are never themselves communicated. We might assume that when he speaks about communication, Blackstone means just what Locke does—that is, communication not *of*, but *about* ideas—but this interpretation poses certain problems for Blackstone’s argument. After all, if communication *does* occur in the Lockean sense, then by Locke’s explicit assertion, both parties must already have the very same ideas. Even more troublesome for Blackstone’s argument is the fact that if Lockean communication occurs between readers and an author, then the readers must have come by their ideas the very same way the author did—through their own mental labor. Why, then, should the author have any more right to those ideas than the reader? On the other hand, if no communication between readers and author occurs, then it is difficult to surmise how a literary work could have value at all. Clearly Blackstone requires a different model of communication, or at least of reading, than we have encountered so far. In fact, Blackstone hints at such a model in his rebuttal to Yates, whose counterargument exposes some of the potential difficulties of Blackstone’s position.

A platonic understanding of communication forms the foundation of Joseph Yates’ argument against literary property. He begins his counterargument by conceding that mental labor does grant a property right. However, “this, and every other Kind of Property may be rendered common, by the act of the Proprietor,” and publication is precisely the act of rendering common one’s mental property: “the Author has a Property in his Sentiments, till he publishes them... But from the Moment of

Publication, they are thrown into a State of universal Communion.” Two English cognates of *communis*, “common” and “communion,” foreshadow the direction of Yates’ argument. He then considers the prerequisites for a property claim, insisting that an item of property must be capable of “separate and exclusive Enjoyment,” and that “actual Possession is not always necessary, yet potential Possession is” (333). Though he does not say so explicitly, Yates implies that incorporeal rights such as the right of way across land arise from the possibility of exclusion. Right of way exists, in short, because it may be enforced or denied by corporeal means. But this is not so of ideas:

The original MS. is not, nor ever was, in the Hands of the Defendants.

The Books sold are not, nor ever were, the Property of the Plaintiffs. The Paper and Ink belonged to the Defendants. All the Plaintiffs can claim is, the Ideas which the Books communicate. These, when published, the World is as fully in Possession of, as the Author was before. From the moment of Publication, the Author could never confine them to his own Enjoyment (334).

After the physical book is sold, nothing corporeal remains for the author or publisher to lay claim to; and because Yates takes a platonic view of communication, he insists that the act of communicating an idea destroys any possibility of exclusively possessing it. Filling out Yates’ argument from the perspective of a dispositional innatist and universalist, we might say that the author’s ideas were already potentially in the possession of all readers, and that by publishing them, the author actualizes that possession, so that no further legal distinction can be made between the author’s

possession of the ideas and readers' possession of them. Since the author can no longer exercise any form of exclusive possession over the ideas, they can no longer be the subject of property, which, Yates reiterates, "acts only upon Subjects, where there is a Possibility of separate and exclusive Enjoyment" (334).

Yates' repeated emphasis on "separate and exclusive Enjoyment" is worth noting, and indicates that his concern with corporeality and incorporeality has more to do with the specific problem of exclusion than with a vague metaphysical qualm about incorporeal property. Nonetheless, when Blackstone begins his rebuttal, he draws attention to Yates' emphasis on corporeality, criticizing Yates' view of property as "having nothing for it's [sic] subject, but what is substantial, palpable and visible," and asserting that Yates has "omitted the Distinction, between corporeal and incorporeal Rights" (340). Blackstone then lists a number of incorporeal rights—"Options... Advowsons, Commons, Ways"—that appear to contradict Yates' staid conception of property. However, Blackstone still fails to address Yates' fundamental argument, which is that ideas (as Yates defines them) cannot ever be exclusively possessed the way options, advowsons, commons and ways can. All of these rights are based on the fundamental property rights granted by physical occupancy or possession, and even if they were not protected by the law as separable and individually transferable rights, they would still exist, being vested in owners as part of their—in Blackstone's words—"sole and despotic dominion" over their property.<sup>74</sup> On the other hand, ideas, at least in the platonic sense, cannot ever be exclusively possessed. Even when the author has an

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<sup>74</sup> William Blackstone, *Commentaries on the Laws of England*, 4 Vols, Oxford, 1765-1769, rpt. *Eighteenth-Century Collections Online*, Gale, 2:2.

idea that no one else has ever thought of before, it remains possible that another may hit upon the very same idea; as Yates would later argue in *Millar v. Taylor*, “many People may have the same Ideas upon the same Subject. In that Case, every one of those Persons to whom they independently occur, is equally possessed and equally Master of all these Ideas” (68). One might object that such a scenario is unlikely, but, objects Yates,

the Improbability of their *hitting* upon those Ideas is not to the Point. *If they should* occur to the Author; He has a Right to publish them. Of this, I think, there can hardly be a Doubt. Yet Property, says *Pufendorf*, is a Right by which the very Substance of a Thing belongs to *one* Person, so that it can not, in the Whole, nor after the same Manner, become *Another's*.<sup>75</sup>

The possibility that an idea might occur to two people independently destroys the possibility that any one person could exclusively possess it. Furthermore, if we adopt a platonic view of ideas, as Yates seems to, then it is possible for *any* idea to occur to two people at once. Exclusive possession of an idea is only possible if we conceive of possession of a corporeal representation of that idea as a way of possessing the idea

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<sup>75</sup> James Burrow, ed., *The Question Concerning Literary Property*, (London, 1773), rpt. in *The Literary Property Debate: Six Tracts 1764-1774*, (New York: Garland, 1975). In *Millar v. Taylor*, Yates would further clarify his position regarding the relationship between property rights and the objects to which these rights apply, arguing that his opponents’ argument relies on a “Fallacy” that results from the equivocal Use of the Word “Property”; which sometimes denotes the Right of the *Person*; (as when We say, “such a One has this Estate, or that piece of Goods;”) sometimes, the Object itself... Here, The Question is upon the *Object* itself, not the *Person*. I readily admit that the Rights of Persons may be incorporeal... But the Question is now, “Whether any Thing *can be the Object of proprietary Right*, which is *not the Object of Corporeal Substance*.” (72)

By this line of reasoning, even “incorporeal rights” are corporeal insofar as they are rights of a corporeal person to engage in some behavior or another.

itself. It is only through the corporeal representation of the idea that the common law property in the right of first publication attaches.<sup>76</sup>

Throughout most of the rebuttal, when Blackstone attacks Yates' view of property, he attacks a straw man; and indeed, neither Blackstone nor Yates seemed to fully realize that their disagreement arose from two dramatically different definitions of the word "idea." However, Blackstone does offer one analogy that strikes near the heart of their disagreement. Disputing Yates' claim that a published work is, "like Land thrown into the Highway... a Gift to the Public," Blackstone counters that publishing a book "is more like making a Way through a Man's own private Grounds, which he may stop at Pleasure; He may give out a Number of Keys, by publishing a Number of Copies; but no Man, who receives a Key, has thereby a Right to forge others, and sell them to other people" (341). In this analogy, the relationship of author, idea, work and reader in Blackstone's view becomes momentarily crystallized. Per Locke, ideas are not held in common but are the inalienable property of their creators, having been generated by individual experience and mental labor. A work is not a collection of its author's ideas, but is rather a key that opens a passage through its author's mind, giving readers a particular kind of access to those ideas. No ideas ever change hands, but, just as one might stroll along a fenced path to view the terrain beyond, readers are able to *experience* the author's ideas, and to develop ideas of their own from that experience. A key is alienable, but the lands to which it grants access remain the property of their

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<sup>76</sup> This line of reasoning persists in modern copyright laws that insist, as does the U.S. Code, that copyright protection begins when a work is first "fixed in any tangible medium of expression" (USC 17.1.102). Ronan Deazley persuasively argues that confusion between property in abstract works and property in physical manuscripts led to a longstanding misreading of *Donaldson v. Beckett* (191-210) as upholding a common-law property in works that was taken away by the Statute of Anne.



owner, and it is a breach of that property to copy the key without permission. Likewise, a work is alienable, but the ideas it grants access to remain the property of their creator; therefore one may possess a work without possessing the right to copy it.

Not only does Blackstone's analogy clarify these relationships, it also hints at a model of reading (thought not of communication—this is a model of reading as non-communication) that might help Blackstone defend literary property from a Lockean standpoint. In this model, the value of the work comes not from the ideas that it communicates, but from the experience that it enables readers to have. Young takes such a view of literary value: “The mind of a man of Genius is a fertile and pleasant field” (9), and the work of genius “opens a back-door... into a delicious Garden of Moral and Intellectual fruits and flowers; the Key of which is denied to the rest of mankind.” These fruits and flowers never change hands; the pleasure of observing them is enough. The work is an “Amusement” and a “Refuge”; through it the reader is “quieted” and “refreshed” (5), and takes a “pleasing Pause” (6); but does the work *communicate* anything? Insofar as it does, it is devalued by Young, for whom anything communicable is, at best, mere learning—“borrowed knowledge” (36) available for loan by anyone, and therefore worth little. In an economy of scarcity, the value of a literary work arises from its incommunicability.

Blackstone and Young must agree on this point if Blackstone's argument is to be sound. If communication does occur, then whatever is communicated cannot be literary property, even if we adopt a Lockean view of ideas. For if readers' ideas are indeed the same as the author's ideas, as Locke insists is necessary for communication;

and if readers produce them by their own labor, as the author had before them, then there remains nothing to be withheld as property. Indeed, at this point, the Lockean model of communication begins to look suspiciously similar to the model of communication implicitly proposed by the Cambridge Platonists. Ideas may come from experience rather than from an “innate cognoscitive power,” but they are effectively common property either way, at least potentially, because otherwise, no communication could occur. The equivalence between innatism and empiricism that Locke had identified in his *Essay* begins to reassert itself here. As long as Blackstone holds on to the notion of communication, he is caught in a double-bind—an inescapable consequence of the paradox of communicable property.

Eight years after *Tonson v. Collins*, Yates and Blackstone again spoke on opposite sides of the literary property debate. This time, Yates stood on the other side of the bar, as one of the four justices in *Millar v. Taylor*; however, he stood alone. As the sole dissenter in the case, Yates’ arguments failed to sway the court against literary property. The center of the literary property debates shifted from the English to the Scottish courts, where a platonic view of ideas continued to play a role. In *Hinton v. Donaldson* (1773), the case in Scotland that contradicted *Millar v. Taylor* and set the stage for *Donaldson v. Beckett* (1774), Donaldson’s counsel made a familiar argument:

Suppose two different men compose tables of interest; if both their calculations are exact, they must, according to the rules of arithmetic, turn out to be the same. This observation will apply to most kinds of tables or calculations, as on life-annuities, logarithms, almanacks, &c. If

the first publishers of any such works were to have a perpetual monopoly, how absurd would such a position be, and how unjust to the rest of mankind!<sup>77</sup>

In a line of reasoning reminiscent of the arguments that Smith, Culverwel and Cudworth had made a century before, Donaldson's counsel argued that the universal nature of mathematical truth—whether founded on empirical observations or on innate truths—directly contradicts the logic of literary property. The very possibility of communication is founded on these truths, and thus if communication is possible, then literary property cannot exist except as a statutory monopoly. There is only one situation, Donaldson's counsel argued,

in which it can be figured that an author retains the exclusive enjoyment of his ideas, after having published them, viz. if he writes in an unknown language, or character invented by himself, and which he alone can decypher.<sup>78</sup>

The regime of literary property is a regime of encryption, in which the reader's understanding of the text is endlessly deferred, but the possibility of understanding remains; and the proprietary work is held forever just out of its reader's grasp.

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<sup>77</sup> Lord Coalston, Reporter, *Information for Mess. John Hinton of London, Bookseller, and Alexander MacKonochie, Writer in Edinburgh, his Attorney, Pursuers; against Mess. Alexander Donaldson and John Wood, Booksellers in Edinburgh, and James Meurose, Bookseller in Kilmarnock, Defenders*, Jan 2. 1773, p. 19.

<sup>78</sup> *Ibid*, p. 11.

## Chapter Two:

### The Vacuous Sovereign in Fielding and Hobbes

In the previous chapter I discussed two claims about knowledge. The first was a neo-platonic claim that we all possess the same innate knowledge, but that this knowledge must be activated in some way—"awoken," as one metaphor had it—before it can be used. The second was a Lockean claim that we are born without any knowledge at all, that all our knowledge is acquired through experience, that we may have different knowledge depending on our experience, and that we cannot transfer this knowledge directly between one another. Although they are primarily claims about knowledge, each entails its own model of communication, with a corresponding structure of power that places communicator and audience in a hierarchical relationship. In the first model, to use a metaphor from Plato's *Theaetetus*, we are "pregnant" with knowledge, which lies in the womb of our mind, and we give birth to it with the aid of a midwife—a title that Socrates claims for himself in the *Theaetetus*. Understood as an account of communication, this metaphor casts the communicator in the role of the midwife, and the audience in the role of the mother, gravid with knowledge that exists but is not yet born. As with a literal birth, the midwife is present only to serve the mother, and as with a literal birth, the midwife is not strictly necessary for a successful birth. At one point in the *Theaetetus*, Socrates even goes so far as to say that he knows nothing of the matter of which he speaks, and that only his interlocutor has any knowledge of it at all: "I myself know nothing about such things, and claim none of

them as mine, but am incapable of bearing them and am merely acting as a midwife to you.”<sup>79</sup> In this model of communication, then, there appears to be a hierarchy of knowledge: Socrates’ knowledge helps ease the pains of birth, perhaps, but it has no effect on the fundamental relationship between audience members and their own nascent knowledge. Although the matter becomes more complicated, at least at first glance, it appears that the knowledge of the audience is central, while the knowledge of the communicator, which exists only to bring forth the audience’s knowledge, is peripheral.

The second model of communication inverts that apparent hierarchy. The knowledge of the communicator, acquired through experience and firmly in the communicator’s possession, is central. The knowledge of the audience at best only enhances the audience’s appreciation of the communicator’s knowledge. As Blackstone put it in *Tonson v. Collins*, the communicator is like a landowner, and the communicator’s knowledge is like a fenced-in estate: the communicator speaks or writes the estate into being, and audience members may enter the estate and observe, listen, read—but must leave empty-handed. In the first model of communication, the audience contains knowledge; in the second, the audience is contained and constrained by it.

Despite their differences, both models of communication have certain effects in common, from a historical materialist point of view. They both take a social relation—a linguistic exchange between communicator and audience—and reify it. In the first

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<sup>79</sup> Plato. *Plato in Twelve Volumes*, Vol. 12, trans. Harold N. Fowler (Cambridge: Harvard University Press, 1921), rpt. in *Perseus Digital Library* (Medford, MA: Tufts University), 157c. Subsequent references cited parenthetically.

model, the exchange of questions yields a child in the hands of the audience. In the second, language becomes real property in the firm possession of the communicator. Although the possessors differ, both models of communication concretize knowledge through a distinctly possessive metaphor. A fundamental premise of this dissertation is that these two models of communication—these two ways of reifying the communicative act—are only two among a diverse array of models that populated eighteenth-century discourse.

In this chapter, I argue that in *Joseph Andrews* and *Tom Jones*, Henry Fielding articulates another model of communication that can be usefully understood as a synthesis of these two models—a model of communication that casts the communicator, or in this case, the *author*, in the role of sovereign. Considering the metaphor of textual sovereignty as deployed in these two novels, I show how these novels cast authority as fundamentally interpretive: the role of the sovereign, whether in a textual or a literal domain, is to resolve interpretive conflicts, and to rectify failures of communication that result from the erroneous use and abuse of language. Within his or her jurisdiction, the sovereign has the absolute and uncontested power to dictate meanings—but the question of *who* is the true sovereign lingers.

As Thomas Hobbes would have it, sovereign power in the abstract “is as great, as possibly men can be imagined to make it.”<sup>80</sup> Yet the body or bodies in which it is vested are subject to contingency and temporal decay, and the true locus of this absolute sovereign power remains uncertain. The possibility always remains that the seeming

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<sup>80</sup> Thomas Hobbes, *Leviathan* (London: Andrew Cooke, 1651) 106-107, rpt. in *Early English Books Online* (12539984).

sovereign of today may be usurped by the true sovereign of tomorrow. I begin this chapter by arguing that a similar potential for inversion of authority appears in Plato's *Theaetetus*: through the metaphor of midwifery, Socrates claims a position of ambiguous authority, placing himself both above and below knowledge. This reading of Plato lays the groundwork for understanding how Fielding synthesized Platonic and Lockean frameworks through the figure of authorial sovereignty. Unlike Blackstone's figure of author as landowner, the figure of author as sovereign, I argue, is structured around a kernel of epistemic doubt. Subsequently, I examine the ways that Fielding portrays himself as sovereign of the works *Joseph Andrews* and *Tom Jones* and links his sovereignty to a particular kind of interpretive power that is akin to Socrates' ambiguous power over knowledge—ambiguous, yet finally indispensable in the face of a Hobbesian proliferation of self-interested miscommunication. I then directly examine the relationship between Fielding and Thomas Hobbes, showing that for both, interpretation poses a fundamental challenge to the concept of sovereignty. Finally, I argue that Fielding's understanding of textual sovereignty infects his conceptions of originality and imitation with its ambiguity, producing a model of literary property that acknowledges overlapping spheres of influence within the textual domain.

### **Sovereignty and Knowledge in Plato's *Theaetetus***

The figure of Socrates-as-midwife appears early in Plato's *Theaetetus*. Written around 369 BCE, this dialogue begins when Socrates is introduced to Theteaetus, the young pupil of a mathematician; in the course of their conversation, Socrates begins to

wonder “what knowledge really is” (145e). They go on to discuss three definitions of knowledge, none of which turns out to be fully satisfactory. But before their discussions of knowledge as “perception,” as “true judgment,” and as “true judgement with an account,” and before the apparent refutation of each of these definitions of knowledge in turn, leading to an aporetic conclusion<sup>81</sup>—Socrates describes his own vexed relationship to whatever it is that we call knowledge: he has none. “I am sterile in point of wisdom” (150c), he tells Theteaetus. Yet at the same time, he says, “those who associate with me... have found in themselves many fair things and have brought them forth” (150d). Though he lacks knowledge, he nonetheless appears to be a proxy for knowledge. Even more puzzlingly, he declares that his highest duty is to distinguish between true and false knowledge, as a midwife might distinguish between true and false progeny, if such things were possible: “women do not, like my patients, bring forth at one time real children and at another mere images which it is difficult to distinguish from the real. For if they did, the greatest and noblest part of the work of the midwives would be in distinguishing between the real and the false” (150a-b). Both in its content and in its somewhat grandiose tone, this assertion belies Socrates' apparently humble claim to know nothing, which begins to look like an exaggeration. Mustn't Socrates know *something* if he is to make such judgments? Socrates is a pauper of knowledge, but somehow he stands in judgment over knowledge like a prince.

How do we resolve this contradiction? One might be tempted to dismiss Socrates' claim to know nothing as purely rhetorical—as a mere example of so-called

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<sup>81</sup> For an in-depth analysis of the *Theaetetus*, see Timothy Chappell, *Reading Plato's Theaetetus* (Cambridge: Hackett Publishing Company, 2004).



‘socratic irony.’ However, I would like to suggest that if there is irony here, we should understand it as part of the *Thetiaetus*’ discussion of knowledge—as an irony embedded in the concept of knowledge itself. If Socrates is to be a judge of knowledge, then perhaps if Socrates *did* have knowledge of the matters under discussion, his knowledge would interfere with his duties as a midwife. Perhaps he would deliver a changeling, substituting his own knowledge for the knowledge of his audience. Or, even worse, what if Socrates’ knowledge were itself false? How could he distinguish false knowledge from true knowledge without being swayed by his own (false) biases? These possibilities suggest that in order to distinguish between true and false knowledge, Socrates must stand apart from the particular knowledge under discussion—in much the same way that a sovereign, in Hobbes’ influential account of sovereignty, stands apart from the law. As Hobbes explains at length in the *Leviathan*, in addition to making law, it is the sovereign’s power and duty to *interpret* law, and to dictate which statements are valid law, and which statements are not. The sovereign has this power not because he has any great understanding of the law, or any particular insight into the law; the sovereign has this power because he is above the law. But for that same reason, no law can validate the sovereign power, which is always threatened by the possibility of a collapse into the state of nature.

It is this figure of the sovereign, standing in judgment over the law—just as Socrates stands in judgment over knowledge—that I argue Fielding had in mind when he famously declared himself, in *Tom Jones*, to be the sovereign founder “of a new Province of Writing,” and the maker of laws that “my Readers, whom I consider as my

Subjects, are bound to believe in and to obey.”<sup>82</sup> Simon Stern has persuasively linked this moment of self-crowning to the contemporaneous discourse surrounding literary property, associating it with William Blackstone's definition of property as "that sole and despotic dominion which one man claims and exercises over the external things of the world, in total exclusion of the right of any other individual in the universe."<sup>83</sup> As Stern points out, Blackstone's description of the right of property as the right of "sole and despotic dominion" is an exaggeration; one need only consider the phenomenon of eminent domain (as one of many examples) to realize that such "total dominion" is at best hyperbole, and at worst an outright fabrication. They may have similarities, but property and sovereignty are not at all the same—to state the obvious. But since this obvious difference is easily elided, it is worthwhile to consider the precise ways these two metaphors resemble each other and the precise ways they differ, and to examine the implications of Fielding's choice of metaphor for our understanding of his relationship to his text—bracketing, for the moment, the complexities introduced by his ironic tone.

The metaphor of communicator as sovereign shares much with Blackstone's metaphor of communicator as landowner. Both metaphors conceive of communication in terms of spaces, territories, arenas of influence and control. Both embed communication within a dense network of social, political, and legal discourses. And both posit a structure of power with the author at its pinnacle, and the audience at its base: one might even say that they are both proprietary metaphors. But despite these

<sup>82</sup> Henry Fielding, *Tom Jones*, Thomas Keymer and Alice Wakely eds. (New York: Penguin, 2005) 74.

<sup>83</sup> William Blackstone, *Commentaries on the Laws of England: A Facsimile of the First Edition 1765-1769*, ed. Stanley N. Katz (Chicago: University of Chicago Press, 1979), 2.2., qtd. in Simon Stern, "Tom Jones and the Economies of Copyright," *Eighteenth Century Fiction* 9:4, July 1997, 429. Subsequent references cited parenthetically.

obvious affinities, the metaphor of communicator as sovereign partakes of the Platonic model of communication in a way the landowner model does not. It resembles the Platonic model because it sets the communicator apart from the matter being communicated, in a position of absolute but ambiguous authority. Whereas in the landowner metaphor, the author owns a text *tout court*, in the sovereign metaphor, the author determines the rules of property within a textual domain. In that sense, then, textual sovereignty is a higher order of property analogous to Socrates' higher order of knowledge.

Partaking of these higher orders of property and knowledge entails some sacrifice. Socrates' claim to know nothing frees him to stand in judgment over knowledge, but also brings his judgment into question. The landowner's possession is secured by the laws of property, but if a sovereign has absolute power to make law, law cannot make a sovereign without begging the question. The question of where legitimate sovereignty lies remains unanswered. According to this metaphor, then, the sovereign author's power over the text is simultaneously absolute and contested.

Most fundamentally, these two metaphors, the metaphor of author as landowner and the metaphor of author as sovereign, suggest two different kinds of power over text. What the landowner possesses in the form of property is power over a localized and constrained domain, power that is alienable and strictly limited in scope. However, the laws of property secure that limited power in a relatively unambiguous way. Under most circumstances, the laws of property ensure that it is clear who owns what, and when an ambiguity does arise, it is the lawmaker's duty to resolve that ambiguity

according to the rules of equity. What the sovereign possesses, however, cannot be guaranteed by law, because sovereignty is the foundation of law. One cannot depend on the circular argument that sovereignty guarantees the law, and the law guarantees sovereignty, because it provides no basis on which to choose between two rival claimants to sovereignty. Though greater in scope, sovereignty is subject to ambiguity and contingency in a way that property—when provided with a solid foundation of law—rarely is.

### **Miscommunication and the Sovereign as Interpreter**

Ambiguity is a central problem for Fielding as well as Hobbes. Many of *Joseph Andrews'* comic scenes rely on choreographed miscommunications; a single phrase uttered in one of these scenes may admit three or four viable yet contradictory interpretations, and each of these interpretations may be applied to the phrase by one or more characters present. To understand these scenes—to perceive the unexpected turns of fate that unfold—to follow the motivations of characters—in short, to get the jokes, one must hold each of these interpretations in suspense with the others. One might analyze these choreographed miscommunications formally, as part of a finely-honed comic technique. However, in my reading of *Joseph Andrews*, these miscommunications serve a thematic, as well as a formal, purpose: they show how sovereign power, when confronted with ambiguous language and a range of conflicting and contested interpretations, works to select and enforce one particular interpretation. At the same time, they show how sovereign power cannot extinguish this ambiguity,

which lingers in spite of the judgments of the sovereign, and may even be said to be the source of the sovereign's power. For if a piece of language truly has only one admissible interpretation, then the sovereign is bound to accept it, but if a piece of language has many equally valid interpretations, then the sovereign is free to select from among them.

The relationship between power and miscommunication becomes a central concern early in *Joseph Andrews*. Joseph's adventures begin when he is dismissed from Lady Booby's service as a result of two elaborately staged, sexually charged conversations, in which Joseph speaks at cross purposes with first Lady Booby and then Mrs. Slipslop. Both scenes are broad parodies of seduction scenes from Samuel Richardson's *Pamela* that derive most of their comic effect from a reversal of gender roles, and for my purposes are worth mentioning only briefly as examples of *Joseph Andrews*' preoccupation with miscommunication and its abuse by individuals in positions of power. In one representative exchange, Lady Booby asks "who is the happy girl whose eyes have made a conquest of you?," and when Joseph responds that all women "were equally indifferent to him," Lady Booby accepts the denotation but inverts the connotation: "O then... you are a general lover."<sup>84</sup> Such comic exchanges reappear throughout the novel, most notably between Joseph and Mrs. Slipslop a few pages later (75).

Elsewhere in the novel, however, Fielding takes up the problem of miscommunication in a less flippant, if no less satiric, fashion. *Joseph Andrews* is rife

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<sup>84</sup> Henry Fielding, *Joseph Andrews*, ed. Paul A. Scanlon (Orchard Park, NY: Broadview, 2001), 70. Subsequent references cited parenthetically.

not only with miscommunication, but also with narratives of jurisprudence, and in several places in the text the two become tightly linked. Rather than passing rulings on the validity of evidence or assigning punishments, judicial officers in *Joseph Andrews* spend much of their time both producing and clearing up linguistic confusion.

In one particularly striking scene, Fielding substitutes a series of ribald puns, misquoted lines of poetry, and failed attempts to decipher a text written in Greek for a somber narrative of due process. The scene begins with an improbable coincidence: while talking with a hunter he has randomly encountered on the road, Parson Adams hears a cry for help, and when he seeks out its source, he finds a rapist attacking a young woman, who turns out to be Fanny Goodwill. Adams knocks Fanny's attacker unconscious, but just as he is preparing to take Fanny to safety, a crowd of nighttime bird hunters—"bird-batters"—arrives on the scene. Unhappily, Fanny's attacker awakes just in time to persuade the crowd that *he* was the victim of Adams and Fanny, whom he accuses of assault and robbery. The bird-batters, examining Adams' face and declaring it "the most villainous countenance they ever beheld" (191), decide to bring Adams and Fanny before the justice of the peace, encouraged by an attorney's clerk who informs them that between them they will split an eighty-pound bounty. A debate ensues between them over who deserves the greatest portion of the reward, a debate that distracts the crowd such that it "required not the art of a Sheppard to escape" (192); but nonetheless, Adams and Fanny do not make the attempt, Adams trusting "rather to his innocence than his heels." Adams' faith, however, appears to be misplaced, at least initially. He and Fanny are brought before the justice, who instructs the clerk to take a

deposition from Fanny's attacker. But in the place of a juridicial narrative describing the testimony of witnesses and the judgment of the justice after due process of law, Fielding substitutes a broadly comic scene featuring a series of communicative failures between Adams, the justice, and the crowd of bird-batters.

These communicative failures begin when one of the crowd sights a "cassock peeping forth from under the greatcoat of Adams." Having been prejudiced by the lies of Fanny's attacker, the justice misinterprets the cassock, saying "'How, sirrah... do you go robbing in the dress of a clergyman? Let me tell you that your habit will not entitle you to the benefit of the clergy'" (195). Immediately, what might seem to be a substantial piece of evidence in favor of Adams' innocence is transformed into evidence of his conniving criminality. One of the crowd, sarcastically dubbed "a great wit," then challenges Adams to trade quotations of Latin poetry with him, assuming that Adams' outward appearance will not be matched by his inward knowledge. Adams initially refuses to participate, telling the 'wit' that "'he deserved scourging for his pronunciation'" (195). The wit interprets this refusal as a further sign of ignorance and guilt, asking "'Why didst not steal some of the parson's Latin as well as his gown'" (195). The 'wit' continues to bait Adams with quotations of various Latin verses, which he believes Adams will not be able to match, but which are in fact misquotations that Adams, exercising polite self-restraint, refrains from correcting. When Adams finally emerges from his damning silence to point out one of the errors, the 'wit' proposes a bet that Adams must decline, not having any currency on hand. The crowd sees this as further evidence that Adams is an impostor, confirming "the triumph of his adversary"

(196).

Once the clerk has finished the depositions of Fanny's attacker and of the other bird-batters, he delivers them to the justice. But the contents of those depositions are never described, nor are they even seen by the justice himself, "who, having sworn the several witnesses without reading a syllable, ordered his clerk to make the mittimus" (196). At this point, the evidentiary process has been entirely superseded by the a string of linguistic confusions. Adams objects to having his arrest warrant drawn up without his being given a chance to defend himself, but by this time, it is clear that the challenge Adams faces is not to demonstrate his innocence by presenting evidence and establishing the true facts of the matter, but is rather to overcome the misinterpretations that have accumulated about his speech and person—a challenge that can be met by no quantity of physical evidence.

That conclusion is reinforced by the justice's reaction to a book that the clerk finds in Adams' pocket. Redoubling the prevailing linguistic confusion, the book is "written, as he apprehended, in cyphers; for no one could read a word in it" (197). The justice concludes that Adams "may be more than a common robber; he may be in a plot against the Government" (197). When Adams insists it is a manuscript copy of the works of Aeschylus, further confusion erupts; the clerk declares "Aeschylus" to be an outlandish name, while the justice insists that it is entirely fictitious. The parish parson, who turns out to be present, determines that it is indeed written in Greek, and that Adams probably stole it along with the cassock. The parish parson declares it to be a catechism in Greek, translating its beginning as "what is your name?"; the justice



repeats the question in earnest to Adams, who does not hear and insists again that ““It is Aeschylus, and I will maintain it,”” and the justice, thinking Adams is answering his question, says ““make Mr. Aeschylus his mittimus. I will teach you to banter me with a false name”” (198).

Finally, someone in the company of the justice recognizes Adams and tells the justice that Adams is indeed a clergyman and a gentleman. Immediately the justice has a change of heart, declaring “I know how to behave myself to gentlemen as well as another. Nobody can say I have committed a gentleman since I have been in the commission” (198). After hearing out Adams’ tale, he quickly concludes that Fanny’s attacker had perjured himself, and becomes enraged when he learns that the man has escaped.

Throughout the course of the justice’s deliberation, judgments regarding matters of fact receive far less attention than judgments regarding meaning. If one accepts the principle that the sovereign has absolute power, then this is not entirely surprising, because while no earthly being could have total authority over matters of fact, it is at least more plausible to claim that an earthly being might have total authority over the arbitrary significations of language. The justice, like all eighteenth-century officers of the judiciary, acts in the name of the sovereign, and the proof of that power lies not so much in his ability to sift through evidence to determine the facts of the matter as in his ability to impose a definitive interpretation on the clothes, acts, and, most importantly, on the speech of Adams, and on the meaning of the words recorded within the book in his pocket.

A final coda, however, shows the corresponding instability of such absolute power over meaning. The episode comes to its conclusion when a "horrible uproar from without" ensues:

the persons who had apprehended Adams and Fanny had been regaling, according to the custom of the house, with the justice's strong beer.

These were all fallen together by the ears, and were cuffing each other without any mercy. The justice himself sallied out, and with the dignity of his presence soon put an end to the fray. On his return into the parlour, he reported, 'That the occasion of the quarrel was no other than a dispute to whom, if Adams had been convicted, the greater share of the reward for apprehending him had belonged. (199)

Despite the fact that the justice has ruled that Adams is innocent, a fight has broken out on the premise that he is not, giving that premise an afterlife, a continued presence that cannot be dispelled by the justice's ruling. This afterlife is the negative counterpart of the justice's absolute power to make meaning. If the justice's sovereignty relies on the arbitrariness of signification, that arbitrariness also taints his judgment, which becomes arbitrary in turn. The justice could have ruled the other way just as easily, a possibility made all the more palpable by the fact that his judgment was swayed not by any physical evidence or testimony that he sought out, but by a random utterance from the crowd. Although the justice ruled in favor of Adams, his ruling was a highly contingent one, and the possibility that he might have ruled otherwise lingers.

## Hobbes and Judicial Sovereignty

Fielding's treatment of justice, ambiguity, and miscommunication in this scene and others like it supports a revised understanding of Fielding's relationship to the work of Thomas Hobbes. Scholars have generally focused on Fielding's relationship to Hobbes in one of two ways. Some have considered it in fairly narrow biographical terms. Fielding may have flirted with Hobbes' philosophy in the early 1730s, during a period of interest in deism spurred by friends James Ralph and Thomas Cooke,<sup>85</sup> and throughout his life Fielding would continue to refer to Hobbes' statement that we laugh at things for which we feel contempt.<sup>86</sup> However, by the 1740s, Fielding had made Hobbes a minor target of his satire, mentioning "The Great Mr. Hobbes" in "An Essay On Nothing,"<sup>87</sup> and implicitly including Hobbes among "these philosophers... who some years since very much alarmed the world, by showing that there were no such things as virtue or goodness really existing in human nature." These philosophers achieved their alarming results, Fielding explains, using a faulty method: "the searching, rummaging, and examining... into the nastiest of all Places, A BAD MIND" (240)<sup>88</sup>—the bad mind in question being, of course, the philosopher's own. Some

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<sup>85</sup> Martin C. Battestin, *A Henry Fielding Companion* (London: Greenwood Press, 2000), 229-230.

<sup>86</sup> In 1737, Fielding, writing as 'Pasquin,' published a letter in *Common Sense* (21 May) defending his political satires after a critic accused him of making "light of great evils" in the *Daily Gazetteer* of 7 May (C. J. Rawson, *Henry Fielding and the Augustan Ideal Under Stress* (London: Routledge and Kegan Paul, 1972) 204. "We do not," he responded, "always approve what we laugh at. So far from it, Mr. Hobbes will tell you that Laughter is a Sign of Contempt" (*Henry Fielding: The Critical Heritage*, Ronald Paulson and Thomas F. Lockwood, eds. (New York: Routledge, 1995) 103.). He also cited the same passage in a letter to James Harris and in "An Essay on the Knowledge of the Characters of Men" (Battestin 81).

<sup>87</sup> *Ibid.* 80-81.

<sup>88</sup> Henry Fielding, *Tom Jones* (New York: Penguin, 2005). 240. Subsequent references cited

scholars have interpreted such jabs as evidence that at least in his later work, Fielding draws his view of human nature from the generally optimistic perspective of latitudinarian (and starkly anti-Hobbesian) theologians such as Samuel Clarke.<sup>89</sup>

On the other hand, as C. J. Rawson has it, “ideas of the natural depravity of man were certainly in wide circulation and could readily enter into certain moods or states of mind in writers who (like Fielding) mainly disliked Hobbes.”<sup>90</sup> On that basis, scholars such as Stuart Sim and David Walker have developed a broader thematic argument that reads *Tom Jones* within the frame of Hobbesian pessimism about human nature. In that novel, they argue, “in the main, human relations fall into a recognizable Hobbesian pattern, where individuals are constantly vying... to improve their own position in the general scramble for power.”<sup>91</sup> According to this view, figures such as Tom Jones and Squire Allworthy are notable counterexamples struggling against a selfish mainstream, and therefore Fielding does not wholeheartedly embrace Hobbes’ pessimism. But the virtue of Tom and Allworthy, even as it confounds the universality of the rule of self-interest, reinforces the Hobbesian argument in favor of absolute sovereignty, as long as it is sovereignty of the good.<sup>92</sup>

Without immediately contesting either of these approaches, I would like to shift

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parenthetically For a brief discussion of such anti-Hobbesian passages in Fielding’s work, see C. J. Rawson, *Henry Fielding and the Augustan Ideal Under Stress* (London: Routledge and Kegan Paul, 1972) 137, n. 13. See also Martin C. Battestin, *The Moral Basis of Fielding’s Art* (Middletown: Wesleyan University Press, 1959) 55-6.

<sup>89</sup> Battestin, *A Henry Fielding Companion* 237.

<sup>90</sup> Rawson 19.

<sup>91</sup> Stuart Sim and David Walker, *The Discourse of Sovereignty, Hobbes to Fielding* (Burlington, Vermont: Ashgate, 2003) 184.

<sup>92</sup> Sim and Walker finally read *Tom Jones* as a “call for diffusion of power, but diffusion within a specific social class, which collectively wields sovereignty over unregenerate mankind—a case of Hobbes modified but his relevance tacitly acknowledged” (ibid. 188).

attention to a narrower register in which Fielding reiterates some of Hobbes' ideas. When Fielding declares his sovereignty over the "New Province of Writing" that is *Tom Jones*, he adds a subtle but remarkable rider, expanding the scope of his sovereign power: "I am at liberty to make what Laws I please therein. And these Laws, my Readers, whom I consider as my Subjects, are bound *to believe in* and to obey" (74, emphasis added). It is insufficient to command the obedience of his readers; Fielding must command their belief as well. What it would mean to 'believe in' a law is somewhat obscure—perhaps we may surmise that 'believe in' here is simply short-hand for 'believe in the authority of'; but even so, by casting his authority as a function of belief as well as of obedience, Fielding introduces an interpretive dimension into the sovereignty to which he lays claim.

This rider therefore has implications in both literary and legal contexts. Thinking in terms of genre, we might read this rider as part of Fielding's broader insistence upon the *historicity* of his fiction, as when in *Joseph Andrews* he explains that "those romance-writers, who intitle their books, the History of England, the History of France, of Spain, &c... should indeed be termed topographers," since although those works eternally contradict each other, "some representing the same man as a rogue, to whom others give a great and honest character, yet all agree in the scene where the fact is supposed to have happened; and where the person, who is both a rogue, and an honest man, lived." By contrast, "with us biographers the case is different, the facts we deliver may be relied on, tho' we often mistake the age and country wherein they happened" (239). In short, Fielding (only half-jokingly) defines biography as that which is

probably true *somewhere*, and history as that which is certainly false in one precise locale.<sup>93</sup> This approach to fiction might be termed “realism,” but it is a realism of a peculiar sort, because it does not purport to hold a mirror up to the world itself, but rather to hold a mirror up to the forms that compose the world. This becomes clearer when Fielding turns to his own work and informs us that “I describe not men, but manners; not an individual, but a species” (240)—‘species’ being a term used by numerous seventeenth- and eighteenth-century commentators on Plato as a synonym for “idea.”<sup>94</sup> Thus, like all the characters in *Joseph Andrews*, the “lawyer in the stage-coach... is not only alive, but hath been so these 4000 years”—and during this long life

he hath not indeed confined himself to one profession, one religion, or one country; but when the first mean selfish creature appeared on the human stage, who made the self the center of the whole creation; would give himself no pain, incur no danger, advance no money to assist, or preserve his fellow-creatures’ then was our lawyer born; and whilst such a person as I have described, exists on earth. so long shall he remain upon it. (242)

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<sup>93</sup> Fielding is using the terms “history,” “biography,” and “true history” quite loosely here—soon afterwards he uses “true history” to describe what he had previously defined as biography. Expanding on his observation about the geographic mistakes of biographers, Fielding continues: “the most known instance of this kind is in the *true history* of Gil-Blas, where the imitable biographer hath made a notorious blunder in the country of Dr. Sangrado. Doth not every one, who is the least versed in physical history, know that Spain was not the country in which this doctor lived?” (240, emphasis added). The result, I would argue, is not terminological incoherence so much as a thoroughgoing irony that holds all of these contradictory meanings in suspense.

<sup>94</sup> The *OED* lists several salient quotations. Ralph Cudworth wrote in his *True Intellectual System of the Universe* (1678) “I suppose, said Socrates, that God and the very Species, Essence or Idea of Life, will be granted by all to be Incorruptible”, while John Norris wrote in his *An Essay towards the Theory of the Ideal or Intelligible World* (1704) that “Plato supposed besides these corporal things another kind of beings separate from matter and motion, which he called species or ideas.”

The lawyer, in other words, is a personification of an abstraction, and the realism that Fielding espouses here is a Platonic realism, a realism that seeks to uncover the structures of repetition and replication within which our everyday experience unfolds. However, insofar as it aims for such generality and divorces itself from the everyday world, Fielding's fiction also admits the possibility of what might be called the erroneous ascription of forms. In other words, although we might incredulously ask, along with Fielding, "is there in the world such a sceptic as to disbelieve the madness of Cardenio?" (240) we are still left to ask who, precisely, *has* the madness of Cardenio.<sup>95</sup> This is a problem that Fielding neatly avoids by renouncing the historian's ambition to ascribe a particular character to a particular person at a particular place and time.

For both Hobbes and Fielding, the problem of sovereignty arises from this strategy, which Hobbes employs at one key moment in the *Leviathan*. Speaking of the sovereign as a *species*, he draws our attention to a puzzling double-bind. First, he insists that "the Sovereign Power, whether placed in One Man, as in Monarchy, or in one Assembly of men, as in Popular and Aristocratical Common-wealths, is as great, as possibly men can be imagined to make it" (106-107). Then he acknowledges that such power may appear to be too great, and that "men may fancy many evil consequences" (107) of it—but they can do nothing to mitigate these consequences, because "whosoever thinking Sovereign Power too great, will seek to make it lesser?; must subject himselfe, to the Power, that can limit it; that is to say, to a greater" (107). In a startling paradox, we find that Hobbes *must* be correct: any attempt to limit sovereignty

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<sup>95</sup> Cardenio was a character in Cervantes' *Don Quixote*, and the possible basis of a lost play, sometimes attributed to Shakespeare, called *The History of Cardenio*.

only magnifies sovereignty. If there is a power that can limit the apparent sovereign, then that power must be greater, and is therefore the true sovereign. However, this argument follows only because Hobbes has cleverly avoided locating sovereignty in any particular person or body. Sovereignty, in the context of this argument, is not the sovereignty of the Rump Parliament, or of Charles II in exile, but is simply *sovereignty*, which lies wherever it must.

Properly understood, Hobbes' argument here is tautological, and he uses the term "must" to indicate not compulsion, but logical necessity. People are not compelled to submit to one particular sovereign; rather, it is logically necessary that there exists a sovereign to whom the people submit. The absolute sovereignty that Hobbes is defending does not rest anywhere in particular, and the question of *who* is sovereign is left open to (potentially violent) debate.<sup>96</sup> In a sense, then, Hobbes' argument is a vacuous argument that leaves us with a vacuous sovereign. This vacuity is precisely the vacuity that Fielding embraces when he defines biography as that which is true *somewhere*. Furthermore, as Fielding suggests by redefining history as romance, any attempt to fill that vacuum must be imaginative. Here the overlap between Hobbes and Fielding becomes clearest: if the power of sovereignty "is as great, as possibly men can be imagined to make it," perhaps that is because imagination *produces* sovereignty in its concrete form. We do not simply obey the sovereign; we apply a conventionally literary mode of interpretation to a political state of affairs by *believing* in the lawmaker or

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<sup>96</sup> Of course Hobbes argues elsewhere that monarchy is the best form of commonwealth, and that therefore the king ought to be considered the sovereign, but these arguments no longer carry the force of logical necessity. They are contingent arguments that are open to debate, revision, and rejection.



lawmakers' sovereignty, even though we know their sovereignty may be at best a useful fiction.

This overlap between Hobbes and Fielding operates not only at the level of literary interpretation, but at the level of legal interpretation as well.<sup>97</sup> When Fielding declares his sovereignty over *Tom Jones*, he also announces "I shall not look on myself as accountable to any Court of Critical Jurisdiction whatever" (74). Though it primarily satirizes the self-importance of Grub Street critics, this witticism draws its structuring metaphor from political philosophy. The relationship between the judicial system and sovereignty is one that Hobbes considers at some length, recognizing that the power to interpret law may become a threat to sovereignty:

The Legislator known; and the Lawes, either by writing, or by the light of Nature, sufficiently published; there wanteth yet another very material circumstance to make them obligatory. For it is not the Letter, but the Intendment, the Meaning; that is to say, the authentique Interpretation of the Law (which is the sense of the Legislator,) in which the nature of the Law consisteth... (142)

Hobbes' insistence that power be located in the sovereign forces him to consider the issue of "authorial intent" in matters of law. This is no mere intentional fallacy, but a logical consequence of Hobbes' line of political reasoning: if the law were to be identified with the "Letter" of the law alone, then law would cease to be a matter of the

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<sup>97</sup> For a discussion of the problem of interpretation in Hobbes with a somewhat different emphasis, see Lee Morrissey, "Re-reading Reading in Eighteenth-Century Literary Criticism," *College Literature* 31.3 (Summer 2004), 157-178.

sovereign will, and power would devolve to the text, or worse, to the *interpreters* of the text. This would be an unacceptable blow to sovereign power:

the Interpretation of all Lawes dependeth on the Authority Sovereign;  
and the Interpreters can be none but those, which the Sovereign... shall  
appoint. For else, by the craft of an Interpreter, the Law may be made to  
bear a sense, contrary to that of the Sovereign; by which means the  
Interpreter becomes the Legislator” (142-143).

Without the support of sovereign authority, an interpretation cannot be considered valid; therefore interpreters of the law must be appointed by the sovereign, and when they interpret, they interpret in the sovereign’s name alone.

Furthermore, Hobbes insists, there is no loophole; there are no steps that the sovereign may take to avoid the problem of interpretation, because language is unavoidably obscure. Even the unwritten law of nature,<sup>98</sup> “though it be easie as such” (143), requires interpretation, which becomes difficult when all available interpreters are “blinded by self-love, or some other passion.” How much more difficult, then, are written laws, which “if they be short, are easily mis-interpreted, from the divers significations of a word. or two: if long, they be more obscure by the divers significations of many words.” In short, without the constraint imposed by the sovereign will, the meanings of any law are subject to ever-increasing proliferation. Therefore, to understand the law, one must have “a perfect understanding of the final causes, for which the Law was made: the knowledge of which final causes is in the Legislator”

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<sup>98</sup> A “Law of Nature” for Hobbes is not a physical law in the sense that we now recognize (as in “Newton’s three laws of motion”), but is rather a universally recognized political stricture.

(143). This last comment reiterates Hobbes insistence, throughout this passage, that the interpretation of a given law must reflect its author's intent. However, as it finally becomes clear, it is not necessary that the interpretation of the law reflect the sovereign's intent at the time of the law's creation. Even that is unnecessary, because for the sovereign, "there cannot be any knot in the Law, insoluble, either by finding out the ends, to undo it by; or else by making what ends he will, (as *Alexander* did with his sword in the Gordian-knot,) by the Legislative power; which no other Interpreter can do" (143). Faced with the knotty prose of written law, the sovereign may attempt to gently unravel the tangled threads of meaning woven therein; but unlike other interpreters, the sovereign has another option. In the final analysis, the sovereign is not the authority on the meaning of a law because there is some fact of the matter about what the law means, which only the sovereign knows, or even because there is some fact of the matter about what the sovereign meant the law to achieve, which only the sovereign knows, and which others can only guess at. The latter may even be true—but it is, finally, irrelevant. The sovereign is the authority on the meaning of a law because, fundamentally, to interpret a law is to make it anew, which only the sovereign may do. To put it into modern literary critical terms, one might say that in Hobbes' view, the sovereign is the one reader for whom the reader-response approach to interpretation is not only semantically but also *legally* valid.

Because the fundamental source of the sovereign's power to interpret law is the sovereign's power to make law, that interpretive power extends beyond written laws to the unwritten laws of nature, which the sovereign had no part in composing. Natural law

may exist, and philosophers may describe and explain it, but those descriptions and explanations are not legal interpretations. Hobbes writes, “The Interpretation of the Laws of Nature, in a Common-wealth dependeth not on the Books of Moral Philosophy. The Authority of Writers, without the Authority of the Common-wealth, maketh not their opinions Law, be they never so true” (143). Even Hobbes’ account of natural law, “though it be evident Truth, is not therefore presently Law... though it be naturally reasonable; yet it is by the Sovereign Power that it is Law” (143). The only interpretation that matters is that of the sovereign.

Nonetheless, Hobbes’ account of sovereignty does not hold the sovereign directly responsible for every valid act of legal interpretation. Law is interpreted not by the sovereign alone, but also by

the Judge constituted by the Sovereign Authority, to hear and determine such controversies, as depend thereon; and consisteth in the application of the Law to the present case... which Interpretation is Authentique; not because it is his private Sentence; but because he giveth it by Authority of the Sovereign, whereby it becomes the Sovereign’s Sentence; which is Law for that time, to the parties pleading” (143).

The sovereign delegates the work of interpretation to a judge, but the resulting structure of power is somewhat new. Hobbes has repeatedly insisted that the sovereign may be one person or a body of people who collectively possess sovereignty. In either case, there *appears* to be a fairly simple relationship between sovereignty and those who possess it. Here, however, the judge speaks in the name of the sovereign, and the judgment

becomes the sovereign's, but the judge is neither the sovereign nor a component of the sovereign body. The judge seems almost to wield temporary sovereignty, and during that time, the judge is not himself—or, if he is, then his judgment is mere opinion. In the passage that follows, however, it begins to seem that this temporary sovereignty is not only a unique property of judicial sovereignty, but of *all* sovereignty. At first, Hobbes seems simply to be acknowledging the possibility of judicial error: “there is no Judge Subordinate, nor Sovereign, but may erre in a Judgement of Equity; if afterward in another like case he find it more consonant to Equity to give a contrary Sentence, he is obliged to do it” (144). For this same reason, the decision of one judge cannot bind another, at least in matters of natural law:

For though a wrong Sentence given by authority of the Sovereign, if he know and allow it, in such Lawes as are mutable, be a constitution of a new Law, in cases, in which every little circumstance is the same; yet in Laws immutable, such as are the Lawes of Nature, they are no Lawes to the same, or other Judges, in the like cases for ever after. Princes succeed one another; and one Judge passeth, another commeth; nay, Heaven and Earth shall pass; but not one title of the Law of Nature shall pass; for it is the Eternal Law of God.

Not only is the power of a judge ruling in the name of the sovereign temporary, the power of the *sovereign* is temporary when it comes to interpreting natural law. When confronted with eternal natural law, the sovereign ceases to be a transcendent font of power, and becomes a mouthpiece for another, higher power. The sovereign does for

natural law what the appointed justice does for the sovereign: he takes a higher order of law and interprets it, applying it to a particular set of local circumstances. This is an act that is fundamentally akin to the work done by those historians who Fielding derides as romance-writers: they conclude that *this specific person at this specific moment* is a rogue or an honest man, and deserves to be treated as such. When Fielding's justice of the peace considers Adams' fate, he must make an interpretive decision: what *species* of person is Adams? Is he a criminal, or is he a parson? Is he a vagabond, or is he a gentleman? The justice has, in that moment, absolute interpretive power. His ruling may be found erroneous and overturned later, but in that moment, it is incontestable; he may make what meanings he will.

This is the power that Fielding claims for himself when he declares himself unaccountable "to any Court of Critical Jurisdiction whatever" (74). But the right of interpretation that he claims for himself in this case is the right not to interpret characters as fictional analogues of living individuals, but the right to decide the species of writing to which *Tom Jones* belongs. Likewise, in *Joseph Andrews*, by claiming to describe "not an individual, but a species," Fielding is explicitly disavowing any interpretation that maps characters in the novel to living individuals, but he is also simultaneously declaring, as from the sovereign's throne, the species to which *Joseph Andrews* belongs: it is not a *roman à clef* or a caricature of one person, but a social satire that aims for broad applicability, and should be read with a reflective mindset. It is through this particular mode of textual sovereignty, I argue, that Fielding expresses his relationship, as author, to the text.

### Genre, Copyright, and the “New Province of Writing”

By disavowing interpretations of *Joseph Andrews* that focus on narrow correspondences between characters and living individuals, Fielding makes the case that the distinguishing characteristics of his novel do not appear at the narrow level of individual character; and likewise, when in *Tom Jones* Fielding declares his sovereignty, he does so in order to assert his right to neglect narrative details that he deems unimportant. The unique qualities of the novel do not arise from such details, and to focus on them is to misread. Fielding explains, “My Reader then is not to be surprised, if, in the Course of this Work, he shall find some Chapters very short, and others altogether as long; some that contain only the Time of a single Day, and others that comprise Years; in a Word, if my History sometimes seems to stand still, and sometimes to fly” (74). The nature of the “New Province” that Fielding has created, then, does not consist merely in Fielding’s autocratic status as author, whose word is law within the narrative. Fielding’s power goes well beyond mere power over the behaviors of a character or the unfolding of a particular plot point. Fielding’s “New province” is a new *genre* of writing; Fielding’s laws are not narrow laws that operate only at the level of plot detail—accounts of what Tom did on page 117<sup>99</sup>—but broad and novel generic laws that determine anew what kinds of writing are appropriate at particular moments. Fielding’s claim to originality is not merely at the level of plot and character, but at the level of genre.

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<sup>99</sup> He punched Blifil in the nose.

Insofar as *Joseph Andrews* is a new genre, then, it is likely to be unfamiliar to readers, and Fielding's methods are likely to be clouded in obscurity. This is a good thing, Fielding informs us:

It is an observation sometimes made, that to indicate our idea of a simple fellow, we say, *He is easily to be seen through*: nor do I believe it a more improper denotation of a simple book. Instead of applying this to any particular performance, we chuse rather to remark the contrary in this history, where the scene opens itself by small degrees, and he is a sagacious reader who can see two chapters before him. (90)

For a book to be easily seen through is to be simultaneously predictable and unoriginal. One sees through a book because it hews slavishly to certain formal conventions; one has, in some sense, read it already, having read so many others like it before. It is easy to master a simple genre as a reader, and once one has mastered the genre, one has mastered the books that belong to it as well. Still more, to master the book is to usurp the author, for one could just as easily have written it oneself. In this sense, an easy-to-see-through book is not only an unentertaining one, but also one that has somehow slipped through its author's grasp.

This is the fate that Fielding avoids by claiming a higher level of sovereignty over his text. *Joseph Andrews*, says Fielding, is difficult—perhaps impossible—to master. Its author is its master, upon whom readers depend to explain, clarify, unfold the narrative piece by piece. But this only holds if the novel is inscrutable: in a sense, then, it is Fielding's job *not* to communicate with his readers, but to withhold



communication, to pose riddles and conundrums not to be seen through. Without the textual sovereign to guide us, we readers are lost in a wilderness of the sovereign's own creation. We must, as readers, submit to our sovereign. This need for submission is further reinforced by Fielding's repeated insistence that readers not dwell on the details of the plot, trying to map characters to living individuals in *Joseph Andrews* and to work out what happened during the capacious breaks and gaps in the narrative of *Tom Jones*. Once one has mastered all those details, one has still not yet mastered the text.

With this line of reasoning, Fielding anticipates the arguments that Edward Young would later make about originality in his *Conjectures on Original Composition* (1759). The details of plot and character that readers can easily glean from any text amount to mere learning, which Young calls "borrowed knowledge," and contrasts with genius, which is "knowledge innate, and quite our own."<sup>100</sup> There is also an echo of Fielding's claim to have founded a new genre in Young's claim that "An Original author is born of himself, is his own progenitor, and will probably propagate a numerous offspring of Imitators, to eternize his glory; while mule-like Imitators, die without Issue."<sup>101</sup> Young here creates an insurmountable distinction between imitation and true originality that is strikingly compatible with Fielding's claim to be a *sovereign* of the genre to which his novels belong, set apart from all others, and laying down laws that others—though they may submit to them, and thereby attain some part of Fielding's success, rather as a well-heeled landowner may depend upon the law of king and

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<sup>100</sup> Edward Young, *Conjectures on Original Composition* (London, 1759), rpt. in *Eighteenth Century Collections Online*. Gale (CW104998891), 36.

<sup>101</sup> *Ibid* 68.

parliament to preserve power over an estate—cannot alter. The property granted by imitating Fielding, in this metaphorical schema, is analogous to an estate; but no form of estate ownership will allow an imitator to claim the sovereignty that Fielding holds. For both Fielding and Young, there is some aspect of the author's text that cannot be communicated to readers under any circumstances, and this asymmetry becomes the basis of an asymmetry of power. Fielding's insistence upon the obscurity of *Joseph Andrews* thus foreshadows the claim of sovereignty that *Tom Jones* makes explicit.

However, Fielding's understanding of originality differs from Young's in ways that complicate any straightforward proprietary metaphor. For Fielding, originality and the sovereignty it grants an author coexists with other, more universal modes of communication. Fielding makes this quite explicit when, in the first chapter of the twelfth book of *Tom Jones*—subtitled, quite baldly, “Shewing what is to be deemed Plagiarism in a modern Author, and what is to be considered as lawful Prize” (545)—Fielding declares that “The Antients may be considered as a rich Common, where every Person who hath the smallest Tenement in *Parnassus*, hath a free Right to fatten his Muse” (546). Here Fielding diverges markedly from Young's position that we ought only imitate the ancients insofar as they were originals; Fielding seems to be perfectly comfortable here with the notion that at some level, the produce of human literary creativity ought to circulate freely and universally. At the same time, “all I require of my Brethren, is to maintain the same strict Honesty among ourselves, which the Mob shew to one another. To steal from one another, is indeed highly criminal and indecent; for this may be strictly stiled defrauding the Poor” (546). If poor moderns must steal

from the abundant estates of the ancients, so be it; but they must not steal from one another. Here, much more than in Young, we see overlapping spheres of right, power, and influence within the textual domain. Some potential conflict between these overlapping spheres emerges; though Fielding finds theft from the ancients tolerable, such theft nonetheless inaugurates a new absolutely private property vested in Fielding. Having stolen sentiments from the ancients, he nonetheless declares “I expect all Readers henceforwards to regard them as purely and entirely my own” (547), a position that in Simon Stern’s words “simply parodies Locke’s theory of acquisition, substituting theft for labour” (438), and threatens to promptly consume and lay waste to this newly acknowledged public domain. However, this competition between public and private, between the commons and the encroaching fence, is unavoidable in a scheme of literary possession that turns on *sovereignty* rather than on *property*. Fielding presents his dictate as an “expectation” to be enforced, finally, not by some universally recognized law of the land, but by the self-policing behaviors of Fielding’s loyal reader-subjects. That is the fulcrum on which this passage and others like it turn, swinging from stately rhetoric to winking self-parody and back again: only as long as we readers recognize Fielding’s sovereignty does his expectation stand as literary law.

By acknowledging the imitative strain in his work, both here and elsewhere (as when he speaks of imitating nature or representing universal types or species in his novels), Fielding ultimately recognizes two different and competing modes of communication. In the first, the author lets his readers in on only half of the secret, opening the scene “by small degrees” (*Joseph Andrews* 90) and always withholding

some fundamental item of knowledge. In the second, the author aids his readers, granting elevated access to the commons of universal knowledge, acting as a teacher or perhaps even midwife, aiding readers as they bring forth knowledge that they possessed already without knowing it. However in both of these models of communication, there remains a lingering sense of doubt. The sovereign author, like Hobbes' sovereign, wields power on an uncertain foundation that is liable to attack by usurpers—imitators who see through the author's obfuscation, perhaps, creating imitations of such excellence that they surpass the original—or by critics who declare that the author never was the rightful sovereign, but only an imitator himself. The knowledge the author withheld, in that case, may prove a phantom that served only to inflame the imaginations of readers. And though the literary midwife helps readers bring their own knowledge forth, the questions of what knowledge *is* and how to successfully distinguish between true and false knowledge remains unanswered.

This uncertainty finally confirms, at least partially, that at the heart of Fielding's understanding of communication lies a Hobbesian vision of a linguistic state of nature. To escape this state of nature, some variety of submission—one hopes to a benevolent sovereign—is necessary. But even so, this escape is always provisional, and perhaps more so than in any corporeal commonwealth. In the context of a linguistic *bellum omnium contra omnes*,<sup>102</sup> the author is king, but no form of textual property is guaranteed.

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<sup>102</sup> Hobbes' phrase, meaning "war of all against all."

### Chapter Three:

#### The Matter of Property in *Clarissa*

Samuel Richardson's *Clarissa* begins with an asymmetry: Clarissa's grandfather wills an estate to her, but her gender and age prevent her from coming into her inheritance, except through marriage. In a certain sense, she possesses the estate, since it has been willed to her, and cannot be taken from her outright; but neither can she dispose of it as she sees fit, and hence, she does not *own* it.

Clarissa's situation is a particular example of a more general legal asymmetry between possession and ownership.<sup>103</sup> In Clarissa's case, gender is the wedge that sunders the two. Yet *Clarissa* and its author were beneficiaries of another wedge driven between possession and ownership: copyright law. The Statute of Anne (1710) granted authors a limited-term monopoly on printed reproductions of their writing. The statute and court cases that followed established a sharp legal distinction between possessing a text and owning it. To own copyright in a text was to own literary property; to possess a text, materialized as a book or manuscript, was to own nothing more than paper and ink.

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<sup>103</sup> I will be using these two terms, possession and ownership, as a way of registering relative differences without reference to one absolute scale. This dissertation discusses many different models for the distinction between possession and ownership, and therefore the words "possession" and "ownership" will have many different meanings in absolute terms; but in all cases, I take the asymmetry itself to be more significant than any one of the many (frequently contingent and constructed) justifications for, or models of, that asymmetry. So, for example, primary texts will sometimes express the possession-ownership divide in terms of material control as opposed to immaterial right; and in that case, "possession" will suggest a corporeal relationship between person and object. At other times, sources will reject the material or immaterial side of this distinction; one might argue, for example, that relationships between persons and objects should be expressed *exclusively* in terms of rights, in which case "possession" loses its specifically corporeal connotation, simply becoming a second set of rights distinct from the set specified by "ownership." Because my aim is to explore precisely the *differences between* such models of difference, I cannot rely on the semantic stability of these terms.

In the career of Samuel Richardson, author *and* printer of *Clarissa*, these two wedges played equally important roles. The first provided a backdrop against which *Clarissa's* character could emerge; and the second provided a legal and economic framework in which *Clarissa* could flourish. While many eighteenth-century authors were insulated from copyright issues by booksellers—who, unlike modern publishers, rarely offered authors a royalty per-sale<sup>104</sup>—Richardson felt the direct economic effect of copyright violations against his novels. He expressed his distress to Lady Bradshaigh in 1754, when his last novel, *Sir Charles Grandison*, was printed and sold without his consent in Ireland: “The Irish Pirates have undersold me in the Six Volumes and made a not unsuccessful Hand of the Basenes, as I am informed... I have been far from meeting with the Success in that Kingdom, that a Man so much injured might have expected.”<sup>105</sup>

Because his career brought him into contact with both of these legal asymmetries, Richardson is an excellent figure through which to examine the relation between them. This chapter begins by arguing that many models of copyright law in the eighteenth century were implicitly gender-based: they imagine a masculine author capable of the incorporeal labor required to create and own immaterial texts, and a feminine reader capable only of possessing and reading material texts. Such models extended, into the realm of copyright, the very legal asymmetry that Richardson critiques in *Clarissa*. Yet Richardson's defense of his economic interests required him to favor copyright. To negotiate this potential conflict, Richardson rejected models of

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<sup>104</sup> William St. Clair, *The Reading Nation in the Romantic Period*, (New York: Cambridge University Press, 2007), 94, 161-65.

<sup>105</sup> Samuel Richardson, *Selected Letters*, ed. John Carroll, (Oxford: Clarendon Press, 1964), 301.

copyright that privileged the immaterial over the material in a gendered way, instead basing his argument for copyright on a predominantly corporeal understanding of virtue. Richardson justifies copyright with an ethical argument that recognizes the investment of corporeal resources into an act of reproduction as the primary determinant of property rights in a text. This model denies the existence of an immaterial "ur-text" that could be owned separately from any particular materialization; the text arises precisely at the moment of printing, and exists only by virtue of the act of reproduction. This reading of *The Case of Samuel Richardson, of London, Printer* sheds light not only on Richardson's position on copyright, but also on the complex and often seemingly contradictory politics of corporeal virtue in *Clarissa*.

The primary legal determinant of copyright in the mid-eighteenth century was the Statute of Anne, passed in 1710, which granted to an author a limited-term monopoly on reproductions of his or her writing—the author typically then sold this monopoly right to a printer or bookseller. However, the Statute of Anne did not extend to Ireland, and the resulting trade in reprints (or piracies, depending on which side of the Irish sea one stands) meant that printers and booksellers on either side of the Irish sea had no legal guarantee of profit in Ireland after the first printing. Richardson therefore hoped to have *Sir Charles Grandison* released first in Dublin, and was making arrangements to do so in the Summer of 1753. In a letter dated July 5th, he remarks that Irish bookseller George Faulkner was negotiating with Richardson for the exclusive right to print the first edition in Ireland. A month later, Richardson wrote to Sophia Westcomb that the deal had gone sour:

"I received a letter from Ireland, the contents of which perhaps will expedite my Design of publishing sooner than I had thought to do... Four Dublin Booksellers have found means to corrupt some of my workers, to give them Copies of my work; which they are printing at several Presses in that City, and so will have me at their Mercy" (*Selected Letters* 240).

By bribing Richardson's press workers, the Dublin booksellers had acquired more than three-fourths of the novel, and were putting it to the press as quickly as they could.

Richardson's initial attempts at damage control led to his publication, in September, of a four-page pamphlet, "The Case of Samuel Richardson, of London, Printer." In it, Richardson details the series of events that led to Faulkner's withdrawal from their contract. After receiving only twelve sheets of *Grandison* from Richardson, Faulkner had discovered that three other Dublin printers had acquired substantial portions of the novel by bribing Richardson's employees. He then told Richardson as much in a letter, explaining that he intended to join ranks with the other printers to recover some fraction of the profit he had anticipated earning from his own printing of *Grandison*.

Richardson's pamphlet denounces Faulkner's actions in the strongest terms; In response, Faulkner issued a number of public letters defending his actions: as Richardson put it, "Faulkner has attempted to whiten himself..." (*Selected Letters* 295). Faulkner's actions were not chivalric, but Richardson's pamphlet failed to acknowledge the difficulty of his position. Not only did Richardson fail to secure the text of his novel—essentially, if unintentionally, violating their contract—he provided Faulkner



with only twelve sheets, (roughly two-thirds of the first volume) while the other three printers had acquired the first five volumes in full, as well as portions of the other two. With such a small portion of the novel, Faulkner could not have mounted a successful defense; indeed, as Faulkner explains in one of his letters, the only reason he could have recovered any profit at all was that, according to a long-standing tradition among Irish Printers, when multiple parties received portions of a text by the same post, they would share them and split the profits of publication. Faulkner's acquisition of the twelve sheets thus entitled him to join the others.

The debate between them became heated enough that Richardson published a second pamphlet, longer than the first. "An Address to the Public" reproduced portions of the epistolary exchange, with extensive commentary by Richardson. When he released his authorized edition of *Grandison* in February 1754, he included the pamphlet at the end of the final volume. In this chapter, I argue that such projection is useful not only in the case of *Sir Charles Grandison*, but in the larger examination of Richardson's career. In the following sections, I first examine Richardson's position on copyright law through an analysis of his pamphlet, "The Case of Samuel Richardson," situating it in its legal and social context and showing that Richardson's position on copyright placed unusual emphasis on the specifically *material* process of textual reproduction. I then examine Richardson's *Clarissa*, in order to show that Richardson's emphasis on the material in his discussions of copyright finds a striking parallel in his discussions of Clarissa's body, especially in the latter portions of the novel.

Richardson's emphasis on the corporeality of the text, and the physical nature of the

violation, should encourage us to reconsider the notion that Clarissa's virtue is wholly immaterial. Although it is certain that her virtue does not depend upon the state of her own body, her virtue must still have physical effects. The act of publishing her letters, of "causing two copies to be made," allows her to leave a material trace of her virtue after her virtuous mind/soul passes beyond the material.

The full title of Richardson's first pamphlet in the matter of *Grandison's* piracy is "The Case of Samuel Richardson, of London, Printer; with Regard to the Invasion of his Property in The History of Sir Charles Grandison, before Publication, by Certain Booksellers in Dublin." It is a title that leaves little to interpretation: specifically, it unequivocally identifies *Grandison* as Richardson's *property*. As one begins to read the pamphlet, however, the matter becomes increasingly unclear. For a text intended to document a theft, it is remarkably silent about what, precisely, has been stolen.

In part, it remained silent on this matter because copyright law was still in its relative infancy. Although the Statute of Anne (1710) had been tested in court numerous times, its full significance would not be worked out until 1774, and many questions were still unanswered when Richardson wrote his pamphlet. One set of unanswered questions is especially important in this case: first, does an author's monopoly on reproductions of his or her works constitute a common law property? Second, if so, did that property depend on an author's possession of the physical manuscript, or did it emerge from an author's role as the creator of the text, when understood as an abstract, immaterial entity? This last question proved remarkably difficult to answer during the

eighteenth century. It was even difficult to ask: as Ronan Deazley has shown, the second question was never explicitly posed at any point during *Donaldson v. Beckett* (1774), the case that gave a definitive answer to the first.<sup>106</sup> Yet this second question has enormous philosophical and legal ramifications. In its most extreme form, it is a question about whether Platonic forms exist, and whether they can be owned.<sup>107</sup>

It is therefore unsurprising that Richardson's pamphlet, published two decades prior to *Donaldson*, falls prey to the same ambiguity. What kind of "Property in The History of Sir Charles Grandison" does Richardson possess?<sup>108</sup> He never specifies. However, as one reads the pamphlet, a surprising pattern emerges—one that suggests a strictly materialistic account of literary property, which repeatedly rejects any notion of property in immaterial texts.

The first hint of Richardson's approach to literary property appears at the beginning of the pamphlet, as he describes the precautions he took to thwart piracy:

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<sup>106</sup> *Pope v. Curll* had settled the second question with respect to the Statute of Anne (Mark Rose, *Authors and Owners* (Cambridge: Harvard University Press, 1993), 64), but did nothing to clarify the matter with respect to the common law, since statutory protection of Pope's letters had not expired. In the court records of *Donaldson v. Beckett*, the closest thing to such a question was the following, posed to the panel of judges who spoke before the House of Lords: "If the Author had such Right [to the first printing] originally, did the Law take it away upon his printing and publishing such book or Literary Composition, and might any Person afterward reprint and sell, for his own Benefit, such Book or Literary Composition, against the Will of the Author?" (Ronan Deazley, *On the Origin of the Right to Copy* (Portland: Hart Publishing, 2004), 195). This question almost clarifies the matter; but it leaves open the possibility that an author could sell a manuscript without publishing it and hence still own the right to the first printing. Copyright would, in that case, be divorced from the physical object, although it would not survive publication. Thus the specific question, "Does immaterial or intangible property in a text exist by the common law" remained unanswered.

<sup>107</sup> This question is also raised by the modern practice of patenting software algorithms, many of which are based on or encode insights from pure mathematics—a field that could be said to define the essence of the Platonic form.

<sup>108</sup> Because the Statute of Anne did not extend to Ireland, he could not have claimed *Sir Charles Grandison* as property under that act in Ireland. Initially, therefore, Richardson seems to be arguing that he possesses a common-law property in the novel; but this position is inconsistent with Richardson's later descriptions of that property, for the reasons I give below.

He had heard an Irish Bookseller boast, some Years ago, That he could procure from any Printing-Office in *London*, Sheets of any Book printing in it, while it was going on, and before Publication; and Mr. *Faulkner* cautioning him on this Subject, with regard to this Work, he took particular Care to prevent, as he hoped, the Effects of such an infamous Corruption, as it must be called; since it could not be done but by bribing the Journeymen or Servants of the *London* Printer. He gave a strict Charge, before he put the Piece to Press, to all his Workmen and Servants. as well in **PRINT** (that it might the stronger impress them), as by Word of Mouth, to be on their Guard against any out-door Attacks.

("Case" 1)

Richardson's emphasis on the word "print" is notable. Why does Richardson feel that a printed notice would impress his workers more strongly than, say, a handwritten notice, or a direct verbal instruction? He appears to perceive an asymmetry between print and other linguistic media—an asymmetry that is incompatible with the logic of immaterial copyright, which would collapse all distinctions between representations of a text, regardless of their medium of transmission. And while Richardson's focuses, here, on the notice's influence on its audience, rather than the question of who owns the text of the notice, these two issues are closely linked. Richardson's strategy implies that printed text conveys a greater sense of authority than other language: paradoxically, Richardson's printed notice, divorced as it is from his body, and providing no clear evidence that it comes from him, is a more authoritative expression of his will than

speech uttered in his own voice! From this perspective, it is more fully *his* text precisely because it has been duplicated and distributed; it is a more authentic expression of his will because it is, so to speak, louder than his voice, and resonates longer—it does not fade into silence the moment it is uttered, and is heard wherever it is distributed.

We may or may not agree with such an attitude, but a strictly materialistic account of literary property could easily emerge from it. One such account, for example, could hold that the existence of literary property does not imply the existence of an immaterial text; rather, a printed text is simply an amplification of the author's voice. As such, authors have the same rights over the printed text as they do over their own voice. In other words, the property in a book arises not from the labor of its production but from its status as an extension of the author's own body.<sup>109</sup>

Richardson never tells us enough to extrapolate such a fully formed account of literary property. However, Richardson did not simply warn his employees and leave at that; nor does his pamphlet. As he describes further precautions, Richardson's emphasis on the material side of literary production becomes more apparent:

To be still more secure, as he thought, he ordered the sheets, as they were printed off, to be deposited in a *separate* Warehouse; the Care of which was entrusted to One, on whom he had laid such Obligations, as, if he is guilty, has made his Perfidy a Crime of the Blackest Nature...

Having Three Printing-houses, he had them composed, and wrought, by

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<sup>109</sup> Such a model would resemble, in certain respects, the notion of moral rights as understood in civil law jurisdictions. While moral rights in modern practice do not include copyright, they reflect the notion that an author's work is, in some way, an extension of him or herself, and hence subject to certain kinds of protection.

different Workmen, and at his different Houses. (2)

Here we learn details about the disposition of the sheets destined to be cut and bound; they were composed by one set of workmen and printed ("wrought") by another; this process was carried out at three different locations in London; and the resulting sheets were deposited at a separate Warehouse guarded by a trusted employee. These rich descriptions of Richardson's printing method make this pamphlet a magnificent resource for historians of material texts: it contains details about the book's manufacture that might have been lost entirely. Yet nowhere does Richardson spend a moment describing the creative or mental, i.e. immaterial labor that produced the text. The space he does not devote to descriptions of the book's production, he devotes to accounts of his employees' corruption, which bookend the above quote, leaving no doubt that their crime constituted a *physical* violation.

The pamphlet continues to follow this pattern, alternating between descriptions of the book's manufacture and denunciations of the Irish printers along with the workmen they bribed. This pattern reaches its climactic moment at the end of the second page, where we find the most convincing evidence of Richardson's preoccupation with the physical labor of book production: "The Editor, who had also great Reason to complain of the Treatment he met with in his *Pamela*, on both Sides of the Water, cannot but observe, that never was Work more the Property of any Man, than *this* is his. The Copy never was in any other Hand; He borrows not from any Author: The Paper, the Printing, entirely at his own Expense" (3). Were Richardson to take up the notion of mental labor, this would be the perfect moment; yet the closest he comes

is to say that "he borrows not from any Author." Richardson's previous descriptions of the production of the book were detailed, and here again, he refers to the handwriting on the manuscript and the cost of the paper and presswork. Yet he reveals no details about his mental labor as an author. In another context, we might interpret this recalcitrance as an attempt to preserve the illusion of historicity.<sup>110</sup> In this case, however, this interpretation is difficult to sustain: "The Copy," Richardson insists, "never was in any other Hand." Not only does he implicitly claim authorship in this passage, he does so by referring to the physical labor of inscription.

So what *is* literary property for Richardson? By the end of the pamphlet, when he finally makes an explicit reference to authorial labor ("in order to secure to Authors the Benefit of their own Labours..." (3)), he has made it abundantly clear that he does not think of such labor as purely or even predominantly mental. What, then, is the alternative? To answer this question, I now turn to a pair of court cases that address such questions. The first, *Millar v. Kincaid*, was concluded in 1751, just three years before Richardson's brush with Faulkner; and the second, *Millar v. Taylor*, was concluded in 1769. Because this second case is better-documented than the first, I will examine them in reverse order; however, the documents that have survived show that the first case, of which Richardson would almost certainly have been aware, addresses precisely the same questions as the second.

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<sup>110</sup> When he published *Pamela*, Richardson carefully avoided being identified as the author, and even expressed gratitude that the plagiarists who released *Pamela in High Life* did not reveal the secret (*Selected Letters* 45).

The dissenting opinion of *Millar v. Taylor* articulates a lucid objection to the idea of immaterial copyright. Justice Yates was the single dissenter in the case, which was resolved in favor of Andrew Millar, a London printer who had brought suit against Robert Taylor for printing Thompson's *The Seasons* without his consent. The Plaintiffs had argued, following Locke, "That Invention [i.e. discovery] and Labor are the Means of acquiring Property; and that literary Compositions are the Objects of the *Author's sole Pains and Labour*: Therefore They have the *sole* Right in them" ("The Question Concerning Literary Property" 66). Yates objected, replying that

If this Argument is confined to the *Manuscript*, it is true: It is the Object *only* of his *own Labor*, and is *capable of a sole Right of Possession*. But it is *not* true, if extended to his **IDEAS**.

All Property has its proper Limit, Extent, and Bounds. *Invention* or *Labour* (be they ever so great) can not change the *Nature* of Things; or establish a Right, where no private Right can possibly *exist*.

The Inventor of the Air-Pump had certainly a Property in the *Machine* which He formed: But did He thereby gain a Property in the *Air*, which is common to All? Or did He gain the sole Property in the *abstract Principles* upon which he constructed his Machine? And yet these may be called the Inventor's Ideas, and as much his sole Property as the Ideas of an Author.

To extend this Argument, beyond the *Manuscript*, to the very **IDEAS** themselves, seems to Me very difficult, or rather quite wild. (66)



Yates accepts Locke's argument, but only so far as it applies to material objects. Any extension of property beyond the physical or corporeal is nonsensical for Yates. He uses several distinct arguments to support this conclusion, but the most interesting concerns the *bounds* of common-law property:

That every Man is intitled to the *Fruits of his own Labour*, I readily admit. But He can only be intitled to this, *according to the fixed Constitution of Things*; and *Subject to* the general Rights of Mankind, and the general Rules of Property. He must not expect that these Fruits shall be *eternal*; that he is to monopolize them to Infinity; that every Vegetation and Increase shall be confined to *Himself alone*, and *never* revert to the *common Mass*... The Labours of an Author have certainly a Right to a *Reward*: But it does not from thence follow, that his Reward is to be *infinite*, and *never to have an End*. Here, it is *ascertained*. The *Legislature* have *fixed the Extent* of his Property: They have allowed Him Twenty-eight Years; and have expressly declared, He shall have it *no longer*. (69)

Physical objects exist only for limited periods of time: houses decay, wood rots and iron rusts, and we do not expect property to extend beyond the "fixed Constitution of Things." Common-law property lasts only as long as its object survives; why then should literary property have an infinite term? Yet the patterns of letters that make up a text cannot rot or decay, in so far as we conceive of them as independent of their medium, ink and paper – a conception that necessarily underwrites copyright law,

specifically copyright law's ability to protect an author's claim over his work. Such immaterial patterns are infinite in duration, and therefore common-law property in them must also be infinite – a temporality contrary to the nature of the common law. Yates' argument resembles a proof by negation; he shows that the idea of a common-law property right in an immaterial text is self-contradictory. Yates is not talking about a statutory, but a common-law right that is in every sense legally indistinguishable from any other form of common-law property. However, he does not then conclude that copyright cannot exist—he only concludes that the common law cannot provide the protections necessary to reward an author's labor. Copyright must therefore be instituted by *statute alone*. By limiting its duration, the Statute of Anne does for literary property what the common law cannot. But while the Statute may protect an abstraction, rather than a physical object, it is *justified* by physical labor, not mental—the labor of transforming *ideas* into physical objects, manuscripts and books.

This expression of skepticism regarding immaterial property illuminates Richardson's pamphlet. Richardson, like Yates, recognizes the right of authors to benefit from their labor—but not their exclusively mental labor. For both Yates and Richardson, the temporary monopoly granted by the Statute of Anne serves to reward only the labor of *framing* an idea in written language, which can then be duplicated with relative ease. Note that that this viewpoint places the labor of printers on the same level as the labor of authors—writing and printing, from this perspective, are essentially similar acts, acts of *translation* from one format to another. The so-called "creative" labor of authors does not elevate them above printers. This emphasis on physical labor

helps explain why Richardson in his pamphlet made reference to his own writing of the text: because he wrote it *in his own hand first*, his manual labor makes him the origin of the text, its maker and its owner.

Although the case was not argued until 1769, the questions it raises would almost certainly have been familiar to Richardson, through an earlier case, as he composed his pamphlet. In 1751, just three years before the publication of "The Case of Samuel Richardson," The House of Lords ruled against a group of London booksellers in the case of *Millar v. Kincaid*. Although the arguments from that case are less rhetorically splendid than Yates' dissenting opinion, they address essentially the same questions. The case had been initiated in 1743, by a group of sixteen London booksellers who charged over twenty Scottish printers from Edinburgh and Glasgow with the piracy of several profitable texts, including Fielding's *Joseph Andrews* (published by Andrew Millar several years before). Rather than coming to any general conclusion about the nature of literary property, The House of Lords rejected the suit based on procedural issues—"the action 'was improperly and inconsistently brought.'"<sup>111</sup> As a result, no binding precedent was set. Nonetheless, the arguments voiced in the case revealed deep inconsistencies between the letter of the law and the everyday practices of London printers and booksellers.

The letter of the law—embodied by the Statute of Anne—specified penalties to be levied against printers and booksellers who trafficked in unauthorized editions. However, for those penalties to apply, the copyright holder of the pirated book must

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<sup>111</sup> *The Case of the Appellants*, 1751 (British Library, BM 18th Century Reel, 4065/03).

have registered the book's title with the Stationer's Company, along with a record of the Author's consent to transfer copyright, if the Author was not the copyright holder. The London booksellers<sup>112</sup> found this requirement onerous: in their *Petition* of 9 December, 1747, they report that

'This Method of proceeding, is so inadequate a Remedy, and is attended with so many Difficulties, that it has scarce ever been practiced since the making of the Act; but Authors and Proprietors, waving the Penalties, have Recourse to a Court of Equity, which proceeds upon the Foundation of the Property declared by the Act, and gives a specifick Relief, by granting Injunctions, to restrain the printing, publishing or selling of pyrated Editions, and decrees them to account to the Proprietors for all of the Profits made by the Sale of any Copies of a pyrated Edition.

And in a Court of Equity, it is noway material whether the Book ever was entered, this being considered as a Circumstance only to intitle the Proprietor to sue for Penalties.' (4)<sup>113</sup>

In other words, the London booksellers had developed a legal sleight-of-hand that converted a limited statutory property into a property "by the common Rules of Law" (9)—a common-law property of exactly the same nature as property in an estate. They

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<sup>112</sup> As William Sale explains in *Samuel Richardson Master Printer* (Ithaca: Cornell University Press, 1950), [XXX], the term "bookseller" had a specific meaning, distinct from the term "publisher," in the eighteenth-century book trade. "Booksellers" were merchants who purchased copyrights and then sought out a printer to produce an edition, which the bookseller would then sell. "Publishers," on the other hand, were merchants whom printers or authors commissioned to sell their own copyrighted works. Naturally a bookseller was almost always also a publisher, but was only the "publisher" of a particular book if he did not own the copyright.

<sup>113</sup> In the eighteenth century more so than now, there was a distinction between law and equity. A Court of Equity would rule on what we would now describe as civil suits.

were able to do so because of the ambiguity of the word "property" in the Statute of Anne; they chose an interpretation that worked in their favor.

What evidence was there that the Statute of Anne declared a common-law property in an abstract, immaterial text? As the Scottish printers pointed out in their *Memorial*, the statute makes little use of the term. While the term "proprietor" appears many times, the word "property" appears only once, in the clause requiring that titles be registered with the Stationer's Company to receive protection—the very requirement the London Booksellers were disputing. Moreover, argued the Scottish printers,

As Property, by all Lawyers antient and modern, is defined to be *jus in re*<sup>114</sup>, there can be no Property without a Subject. The Books that remain upon hand are no doubt the Property of the Author and his Assigns. But after the whole Edition is disposed of, the Author's Property is at an End

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<sup>114</sup> "Right in a thing." In later cases, supporters of immaterial property would correctly argue that many forms of property are more concerned with usage rights than with physical possession—for example, a theater subscription grants you the right to sit in a given seat for given periods of time, but you do not therefore own the seat. Nonetheless, a theater subscription is a form of property—arguably, an incorporeal or intangible property. On the other hand, a theater subscription can be reduced, in the final analysis, to a right in a unique physical object. This right does not extend to all the seats in the theater, nor to all seats of a particular design. Literary property and its cousins are unique in that they do not protect rights in any particular object, but rather protect rights in any object in a given abstract class.

This is a subtle distinction, and deserves further clarification. Supporters of immaterial copyright could object that one *can* own an immaterial, common-law right in a class of objects. For example, one could imagine someone buying tickets to all the seats in a theater. In that case, the purchaser would own an immaterial right in all the objects in a given class—the class of all seats in the theater. However, this is a strictly finite class, since only so many seats can fit in the theater. This situation would be analogous to a system of copyright that protects the author's right to copy all physical books that are *provably* of a particular physical origin. However, this again is a strictly finite class. The moment one protects rights in any book that "looks like" the book in question, one gets a potentially infinite set of books. A useful concept to clarify this issue comes from the distinction, made in the philosophy of language, between "intension" and "extension." The intension of a set is, essentially, the test that determines which objects are members of the set and which are not. The extension of a set is precisely those objects which exist and are members of the set. If we define copyright as applying to a set of texts defined extensionally, then that set is necessarily finite and has a corpus. If we define copyright as applying to a set of texts defined intensionally—that is, by some rule of resemblance—then the set could in principle be infinite. Using these terms, we can be more precise and say that Yates and co. are objecting to the idea that copyright might protect rights in a set of objects defined intensionally.

There is no Subject nor *corpus* of which he can be said to be Proprietor.

(7)

This argument reappears, in various forms, several times throughout the *Memorial*, showing that the foundation of Yates' argument had been laid many years before his articulation of it.

It is almost certain that Richardson would have been aware of *Millar v. Kincaid*. We know, at the very least, that Millar and Richardson were business partners and friends. Through the course of his career, Richardson printed more than seventy works for Millar (Sale 331), and wrote to Aaron Hill, in 1749, that he thought Millar "a fair honest, open Man, and one who loves to deal generously by Authors" (quoted in Sale 331). In another letter, written to Thomas Edwards in April 1753, he reports being in the company of Millar and encountering William Warburton (*Selected Letters* 226).<sup>115</sup> In addition to being a friend of one of the plaintiffs in the case, Richardson was a senior member of the Stationers' Company, having been elected to the office of upper warden in June, 1753; the next year, just a few months after the publication of *Sir Charles Grandison*, Richardson was elected Master of the company, its highest office (Sale 331). *Millar v. Taylor* was of such importance to London printers that it could hardly have escaped the notice of any of the Company's senior officers.

Richardson's position of prominence among London printers makes it especially

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<sup>115</sup> In the letter, Richardson reports that Warburton slighted him, apparently offended by a passage in *Clarissa* that may have referred to Alexander Pope, who had been a close friend of Warburton's. Warburton himself had been a participant in the copyright debates; his *Letter from an Author to a Member of Parliament, Concerning Literary Property* was published in 1747 (William Warburton, *Letter from an Author to a Member of Parliament, Concerning Literary Property*, (London: John and Paul Knapton, 1747), rpt. in *Horace Walpole's Political Tracts, 1747-1748*, ed. Stephen Parks, (New York: Garland, 1974).)

surprising that Richardson sympathized with the perspective of those who argued that common law property could only apply to corporeal bodies. Throughout the eighteenth century, printers from London consistently took the position that a common law property in textual copyright existed, and defined that property in a way that was inconsistent with that position on copyright. Yet as I have tried to show, "The Case of Samuel Richardson" resists the suggestion that property might exist in an immaterial text. In the next section, I argue that Richardson's position on literary property is inextricable from the aesthetic and ethical positions he maps out in his *Clarissa*. The copyright materialists consistently argued that property must eventually relate to a body, a corpus; no property could exist in the incorporeal and immaterial realm of ideas. This argument is especially revealing when considered alongside long-standing debates over the virtue of Richardson's heroines. Was Pamela a paragon of virtue or simply a canny saleswoman? In the latter case, what could she have sold to Mr. B, over and above her *body*? The matter is further complicated in the case of *Clarissa*: once she loses control of her body, what property does *Clarissa* retain in herself? We could ask a nearly identical question about Richardson and his book, *Sir Charles Grandison*: after he sold his copies of the first edition, what property does Richardson still hold that could exclude the Irish booksellers from reprinting it? These questions, which copyright poses in such stark terms, also go to the very heart of Richardson's novels.

The choice between *Pamela* and *Clarissa* is a classic one between two

strikingly and reciprocally imperfect alternatives: manifest material and social empowerment, which can be only fitfully acknowledged on the plane of discourse; and manifest discursive and imaginative empowerment, whose material register consists in nothing more substantial than the posthumous requital of one's persecutors.<sup>116</sup>

When Michael McKeon framed his "classic choice" between *Pamela* and *Clarissa*, in *The Origins of the English Novel*, he cannot have been thinking of immaterial copyright. Few concepts seem so perfectly designed to allow one to have one's imaginative and discursive cake and eat it too; in the context of immaterial copyright, imaginative empowerment and material empowerment are perfectly coterminous. Imagine, for a moment, that Richardson's heroines had been able to benefit monetarily from the success of their epistolary output. There is little doubt they would have prospered; and while, in *Pamela*'s case, the profits from manuscript sales would have been icing, for *Clarissa*, they would have been the entire cake.

Therein lies both the promise and the paradox of immaterial copyright. As we carry this absurdity a bit further, we run into a problem: for while it would seem appropriate for *Clarissa* to receive some recompense for her suffering, to profit from the publication of such suffering seems sordid. Imagine *Clarissa* at a book signing, "in her virgin white."<sup>117</sup> Look, she even brought her coffin—see, there, behind the podium!

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<sup>116</sup> Michael Michael, *The Origins of the English Novel* (Baltimore: Johns Hopkins University Press, 2002), 381.

<sup>117</sup> Samuel Richardson, *Clarissa* (New York: Penguin, 1985), 1351.



It would probably have spoiled the ending.

Debates over literary property yield similar puzzles. At one point in his dissenting opinion in *Millar v. Taylor*, Yates remarks on the perplexing fact that, according to his opponents, publication marks the beginning of a *private property* (Burrow 67). This follows from an argument common among supporters of perpetual literary property in the eighteenth century: where there is value to protect, they argued, there is property (65). But the immaterial text itself has no clear value until it has been reproduced and published; however high the demand for a text might be, without a supply of copies, the text has little value. It acquires value only once it has been reproduced and made available to the public, and the market value of the copyright is therefore based on the *projected* profits to be made from the sale of those physical copies (65). The manuscript itself could be sold prior to publication, but in that case, it is difficult to distinguish between the value of the text and the value of the manuscript; they are, after all, one and the same. Even in the case of manuscript *copies*, the price would have reflected the labor of the scribe as much as—if not more than—the labor of the author. We can determine the value of the *text itself* only after publication. Hence the unpredictable nature of royalty advances in today's commercial book trade. Yet after publication, no single book or manuscript fully embodies the text; the text has no particular corpus, no body, any longer. A text can only become a profitable commodity once it has been "dislodged" from its body by reproduction—when it has lost an individual body or source, and inhabits multiple bodies, i.e. when it is reproduced.

In both of these cases, the elevation of an object to the status of commodity

coincides with its own erasure as a unique material object. The manuscript, which was once the *text itself*, becomes just another copy.<sup>118</sup> Likewise, Clarissa can only become a cultural icon if she is not, and has never been, a living person. Commodities—eternal forms—discursive constructs—are in a certain sense incommensurable with physical things. Yet the notion of immaterial property attempts to bridge this gap, by guaranteeing an exclusive dominion over forms that resembles our exclusive dominion over corporeal property. For Richardson, such attempts fail; but McKeon is incorrect to suggest that this failure yields a simple choice between material and discursive empowerment. In fact, such attempts to bridge the gap between the material and the immaterial worlds are as important to Richardson's ethical vision as are their eventual failures. To choose only one or the other is as blamable as to believe that you have a firm grasp on both.

Nonetheless, McKeon's choice is an old and familiar one. According to this view, Pamela's virtue consists of nothing more or less than control over her body, and as such, is indistinguishable from the control a careful businessperson would exert over her merchandise.<sup>119</sup> Clarissa, on the other hand, steadfastly refuses to involve herself in this marketplace of marriage, whether bargaining from a position of strength or of weakness. Read against the backdrop of *Pamela*, this refusal becomes corroborating evidence of the evaporation of Clarissa's body into pure discourse.

A number of recent critical works have questioned this easy dichotomy on both

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<sup>118</sup> One might object that manuscripts are still accorded special status; but I doubt the value of an unpublished manuscript could ever approach the net earnings of its text after a few years of publication. If it could, then authors would have little motive to print their texts.

<sup>119</sup> For an updated version of this argument, see Ann Louise Kibbie, "Sentimental Properties: *Pamela* and *Memoirs of a Woman of Pleasure*," *ELH* 58.3 (1991), 561-577.

sides.<sup>120</sup> Yet I would argue that none have fully countenanced one of the deepest paradoxes of *Clarissa*: as the novel draws to a close, its heroine enmeshes herself in material commerce even as she renounces the material world. Irene Fizer's excellent "Rags of Immortality" makes a laudable attempt to synthesize these opposing tendencies: she reads Clarissa's commercial activity as a means "by which she accommodates to a status of radical disinheritance" and "asserts ownership... over herself" (34). But Fizer's is an uneasy accommodation; the second-hand sale of clothing at artificially low prices is a poor comfort. Moreover, as Fizer herself observes, Clarissa continues to sell her clothing after she is beyond any comfort, instructing in her will that her linen and remaining laces be sold off.<sup>121</sup> Although Fizer correctly asserts that these commercial acts do not debase Clarissa, her reading masks the way the novel, in its preoccupation with such acts, echoes Clarissa's tortured relationship with her body—"how this *body* clings—How it encumbers!" (1265). Clarissa cannot escape her body, and *Clarissa* cannot escape describing, in sometimes cumbersome detail, the minutia of its adornment.<sup>122</sup>

In my reading, Clarissa's attention to her body and its adornment is no mere accommodation to disinheritance—nor is it simply a means of reasserting self-

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<sup>120</sup> In the case of *Clarissa*, see Irene Fizer, "Rags of Immortality: Clarissa's Clothing and the Exchange of Second-Hand Goods," *Eighteenth-Century Fiction* 20.1 (2007), 1-34. See also John Richetti, *The English Novel in History, 1700-1780* (New York: Routledge, 1999). Charlotte Sussman's review of McKeon's opus in *diacritics* outlines a comparable critique in the case of *Pamela* (Charlotte Sussman, "'I Wonder Whether Poor Miss Sally Godfrey Be Living or Dead': The Married Woman and the Rise of the Novel" *Diacritics* 20.1 (1990), 88-102).

<sup>121</sup> To be precise, she instructs that Mrs. Lovick and Mrs. Smith divide the effects between themselves, but that, "in the case of disagreement," (1417) they should sell them and split the profits evenly. This potentially avoids placing the textiles on the open market, but it also validates the open market as the true and final arbiter of their value.

<sup>122</sup> Despite these problems, Fizer's essay throws into brilliant relief the error of any interpretation of *Clarissa* that treats the novel exclusively as a story of "discursive and imaginative empowerment."

proprietorship. Rather, it is evidence of an irresolvable paradox at the heart of the concept of virtue. Some of the clearest evidence of this paradox appears in her will—which, when it comes into effect, marks both her death and her strongest assertion of proprietorship in the novel. This paradox brings into sharp focus the contradiction between accommodation to "radical disinheritance" and the assertion of self-ownership. What more radical disinheritance is there than death? No self-ownership can be asserted in the face of death, nor can anything accommodate one to it. And yet the self-possession with which Clarissa has penned her will gives it an extraordinary force. Though her requests in life were not granted, her instructions in death are assertive and commanding; only then does she possess that crowning right of property, *jus disponendi*, the right to dispose of a thing. Only in death is Clarissa the unquestioned proprietor of her estate.<sup>123</sup> As I read it, *Clarissa* does not attempt to synthesize these opposing trends; rather, *Clarissa* is the end result of the productive tension between the two. As it transforms perfect disinheritance and perfect ownership into their exact opposites, Clarissa's will forms the singularity around which the rest of the novel revolves.

The will foregrounds this paradox in its first three instructions. She first requests that that her body remain unburied for three days; second, she requests that it "remain unopened" (i.e. that no autopsy or embalming be performed); and third, she requests

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<sup>123</sup> Ann Louise Kibbie takes this fact as the basis of her concept of "posthumous possession" (Ann Louise Kibbie, "The Estate, the Corpse, and the Letter: Posthumous Possession in *Clarissa*," *ELH* 74.1 (2007), 117-143). It is important to remember, however, that any such "possession" dissolves as soon as the will is executed, divesting the estate.

that "it shall not be touched but by those of my own sex" (1413).<sup>124</sup> These instructions directly contradict the notion that Clarissa had divested herself of all concerns about the material world. If Clarissa were indeed perfectly content to leave behind the corporeal world, it is unlikely that she would have included such detailed instructions about her body's treatment. This is especially true of the third instruction. Combined with her later instructions, the first two leave no ambiguity as to the manner of her burial. They certainly would have prevented Lovelace from taking possession of her body by having her embalmed, as he proposed to Belford after learning of her death. As such, they fulfill whatever duties were left to her, and sew up whatever plot threads remain. Clarissa's additional desire that her corpse remain untouched by men exceeds the requirements of duty and plot. It belies her earlier claim, as reported by Belford, that "the thought of death, and its hoped-for happy consequences... annihilates all other considerations and concerns... and shuts out the remembrance of past evils from my soul" (1306). The comfort of an approaching death did not erase her concern for her body after all. We can see that this concern for her body yielded tangible fruit; her instructions regarding her body were followed. Lovelace, who had once taken possession of Clarissa's living body, never possesses it after her death, nor does his desire to see her embalmed come to pass. Clarissa's other instructions regarding her body were also followed; even her more tentative requests, such as her request to be interred at her grandfather's feet, were granted. In the matter of her body's disposition,

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<sup>124</sup> Although such instructions were not without precedent (Kibbie 131-132), they appear to have been the exception, rather than the rule, as the century wore on. See Paul S. Fritz, "The Undertaking Trade in England: Its Origins and Early Development, 1660-1830," *Eighteenth-Century Studies* 28.2 (1994), 249.

her testament is the most successful expression of her will in the novel. However, Richardson only allows us to learn this after Clarissa has been buried; we first learn of her body's treatment through Bedford's correspondence with Morden, and only later do we see the text of the will. This delay further emphasizes the incommensurability of Clarissa's corporeal presence with the physical execution of her wishes.

As the will transitions from burial instructions to property divestment, Clarissa's tone becomes even more commanding. She introduces her first bequest with a particularly forceful sentence: "And now, with regard to the worldly matters which I shall die possessed of, as well as to those which of right appertain to me, either by the will of my said grandfather, or otherwise; thus do I dispose of them" (1413). The semicolon towards the end of this sentence severs it in two, creating a sharp distinction between necessary but equivocal legal cant and the will's most important illocutionary act. The latter is a self-contained sentence, despite its punctuation; given Clarissa's normally verbose style, is a remarkably short, forceful declaration, which sets a tone that infuses the rest of the will. She begins to use declarative sentences of the kind rarely seen in any of her early letters concerning property. Early in the novel, for example, when Clarissa informs her mother that she has received a letter from Lovelace, she packages her desire in an admirable labyrinth of equivocal modifiers: "I humbly presume to hope that I shall not be required to produce the letter itself" (123). Even the most tentative of sentences in the latter portion of the will is more straightforward; consider Clarissa's assertion of her right to bequeath money inherited from her grandfather: "These sums, however considerable when put together, I hope I

may be allowed to dispose of absolutely" (1414). Clarissa no longer characterizes her hope as a "humble presumption"—and yet she is speaking of the disbursement of more than a thousand pounds, whereas before, she was defending a simple right to withhold private correspondence. After this deferent gesture, almost all of the remaining instructions use unqualified verbs: "I give and bequeath all the real estates in or to which I have any claim... to my ever-honoured father..."; "I bequeath to my ever-valued friend..." (1414-1415). In this, her final composition, Clarissa's language adopts the force of law; her words become flesh.

While this central paradox becomes most visible late in *Clarissa*, its foundation is laid much earlier in the novel. In one key letter, written after Belford's first face-to-face meeting with Clarissa, Belford intercedes with Lovelace on her behalf, requesting that he abandon his attempts to seduce her, and "be honest, and marry" (556). Lovelace's other compatriots also sign the letter, and Belford speaks for all of them when he confesses that he does not see Clarissa as a corporeal being:

She is, in my eye, all mind: and were she to meet with a man all mind likewise, why should the charming qualities she is mistress of, be endangered? Why should such an angel be plunged so low as into the vulgar offices of domestic life? Were she mine, I should hardly wish to see her a mother unless there were a kind of moral certainty that minds like hers could be propagated. For why, in short, should not the work of bodies be left to *mere* bodies? (555)

Taken at face value, Belford's description of Clarissa seems to validate the notion that

her virtue is of an entirely otherworldly nature, utterly divorced from the bustle of the material world, the "vulgar offices of domestic life." Clarissa's very nature as a pure, virtuous mind renders her unfit for the "work of bodies." Yet we must ask why Richardson puts these words in the mouth of a close associate of the novel's greatest villain. Belford pens this letter well in advance of his full reformation, and while it foreshadows that reformation, it does not express sentiments appropriate to a reformed rake, since it advocates not a general end to Lovelace's predatory sexuality, but only forbearance in the case of a particularly virtuous woman. Belford's letter is not an example of virtue; instead, it is a foil against which Richardson encourages us to read Lovelace's response: "is it to be expected that a woman of education, and a lover of forms, will yield before she is attacked?" (557). Belford's letter emphasizes the depth of Lovelace's depravity, showing that he will go further than any of his rakish associates.

Should we, then, entirely trust Belford's vision of Clarissa as pure mind, unadulterated *nous*? I think not: although he perceives Clarissa's virtue, he does not fully comprehend it. Nonetheless, his description of Clarissa's virtue contains very specific clues as to its true nature. Belford states that he would not want to see Clarissa a mother, "unless there were a kind of moral certainty that *minds like hers could be propagated*" (555, italics mine). Belford does not believe that Clarissa should engage in physical reproduction *unless* that physical reproduction would yield minds as virtuous as her own. If such an expectation could be met, then it would be appropriate for Clarissa to descend from the realm of mind into the realm of matter, undertaking the "work of bodies." Indeed, it would be more than appropriate; although Belford does not



say so directly, his language logically implies that if such a "moral certainty" did exist, it would be more virtuous for Clarissa to bear children than for her to remain childless.

As the novel proceeds, we learn that no such "moral certainty" exists, and Clarissa fails to reproduce—at least in the conventional sense. However, the closing episodes of the novel reveal that Belford's first impression of Clarissa concealed a prophetic kernel. Adam Budd has persuasively argued that Richardson intended Belford as a model of *Clarissa's* ideal reader: a former rake reformed by his exposure to Clarissa's story, Belford exemplifies the transformation that Richardson hoped his novel would encourage in readers. Or—to put it in Belford's own words—he becomes the first proof that "minds like hers could be propagated." Even more suggestively, Belford becomes Clarissa's literary executor, having been directed by her will to collect the letters pertaining to her story and to "cause two copies to be made of this collection" (1418). Belton's first encounter with Clarissa led him to fantasize about mental reproduction; and by the end of the novel, Belford has become Clarissa's partner in the propagation of virtuous minds. While this partnership retains an incorporeal, mental character, Belton's prophetic description of Clarissa after their first meeting shows that even such an apparently mental partnership can never be fully distinguished from a physical one. It is precisely the "work of bodies" that enables propagation of virtuous minds—an assertion born out by the simple observation that it is precisely Belford's *corporeal* act of duplicating the text of Clarissa's story—of causing "two copies to be made"—that enabled its spread. Without such corporeal reproduction, no mental reproduction could occur.

Belford's description of Clarissa thus encourages us to associate mental reproduction with physical reproduction, and by extension, to associate sexual and textual reproduction. Read through such a lens, Belford and Clarissa's partnership late in the novel takes on a sexual character, and to the degree that Clarissa is fertile in the novel, it is through their pairing. Yet here again, there is a twist: if we take this analogy to its logical end, then we must acknowledge that Clarissa inseminates Belford, while Belford carries the pregnancy to term. Considered in this light, Richardson's novel articulates a coherent ethic of reproduction, one that can be applied both to biological and intellectual partnerships—to partnerships between husbands and wives, partnerships between authors and executors, and, in the final analysis, partnerships between authors and *publishers*. This ethic does not confine itself to the behaviors of the mind—to intentions, beliefs and intellectual pursuits—but overflows into the material realm, as it must if it is to have any influence over the course of human lives.

Richardson was by no means the first to yoke child-bearing and literary production; as Margreta de Grazia and others<sup>125</sup> have shown, metaphors of reproduction were freely exchanged between discourses of printing and of parenting in the early years of the press. Moreover, these exchanges often turned upon the uncertainty, which haunted both, over legitimate parentage. The impression of inked type on blank page modeled (and was modeled by) the impression left by a father on a mother's womb; family resemblance between father and child—that uncertain evidence of fidelity in

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<sup>125</sup> *Printing and Parenting in Early Modern England* collects a number of essays addressing this topic, see especially Margreta de Grazia, "Imprints: Shakespeare, Gutenberg, and Descartes," *Printing and Parenting in Early Modern England*, ed. Douglas Brooks (Burlington: Ashgate, 2005).

reproduction—gave proof that the printer was true to her copy: "Your mother was most true to wedlock, prince, / For she did print your royal father off, / Conceiving you" (*The Winter's Tale* 5.1.123-5, quoted in de Grazia 42). De Grazia identifies Aristotle's theory of the four causes<sup>126</sup> as an ancient forebear of this metaphorical exchange; father and mother are, she argues, to be identified respectively with the efficient and the material causes: the type and the paper; the fashioner and the material to be fashioned. However, for my purposes, the most interesting cause is Aristotle's second, the formal cause. De Grazia does not discuss this cause directly, but it is quite as relevant to the gendering of reproductive activity as are efficient and material causes: it is present in the efficient cause prior to the act of reproduction, and in the act, is transmitted to the material. The flow of forms from object to object is thus a gendered flow, from masculine to feminine. One could go so far as to argue that the gendered nature of this flow underlies the more superficial gendering of efficient and material causes in these metaphors of generation.

Although these early modern conceits had partially faded into the background of eighteenth-century discourse, they had not disappeared: in "A Letter from an Author to a Member of Parliament," the author observed that "A Father cannot more justly call his Child, than an Author can his Work, his own" (2), specifically associating the *fathering* of children with the intellectual work of framing texts, despite—or because of—a

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<sup>126</sup> Aristotle identifies four causes, material, formal, efficient and final. In simplified terms, these four causes could be thought of as the answers to the following four questions: Of what is it made? What is its form? Who or what makes it? Why was it made?

mother's stronger claim to parenthood in physical and biological terms<sup>127</sup>. The flow of forms from object to object was still gendered; form still originated with the masculine and flowed into the feminine. This gendering can be seen at work in Young's *Conjectures on Original Composition*, which originated as a letter to Richardson from the author, and was first printed by Richardson in 1759. Young observes that many classical authors "are *accidental Originals*; the works they imitated, few excepted, are lost: They, on their Father's Decease, enter, as lawful Heirs, on their Estates in Fame"; by contrast, "The Fathers of our Copyists are still in possession; and secured in it, in spite of *Goths*, and Flames, by the perpetuating power of the Press. Very late must a modern *Imitator's* fame arrive, if it waits for their decease" (15). Here a formal inheritance is passed on from father to son by the rules of primogeniture. However, Young takes the metaphor in an unexpected direction: the embodied text becomes not simply a child but a vehicle for a surrogate self, which may die at the hands of "*Goths* and Flames," but only in the absence of adequate reproductive technology. Given a sufficiently fecund and faithful press-womb, authors can, in a matter of speaking, clone themselves indefinitely and prolifically, without relying on the uncertain and limited output of the scribe's pen. This new development further magnifies the link between

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<sup>127</sup> This is by no means an assertion that authorial production was exclusively associated with fatherhood, but simply that the association between fatherhood and mental, intellectual and incorporeal labor and reproduction remained strong. Maternal metaphors perforce carried other associations, casting authorship as another form of *bodily* labor, which would have done little good in defense of an *incorporeal* property, but which dovetails perfectly with Richardson's emphasis on the manual labor of printing in his defense of his own literary property. Indeed, as Katherine Maus has shown, the womb provided a ready metaphor for creative interiority in the early modern period (Katherine Maus, "A Womb of His Own: Male Renaissance Poets in the Female Body," *Printing and Parenting in Early Modern England*, ed. Douglas Brooks (Burlington: Ashgate, 2005)). Richardson's description of the caches of printed sheets from *Grandison*, and his sense of violation at the invasion of those caches, suggest that a similar metaphor is at work in *The Case of Samuel Richardson*. However, Richardson is too polite to explicitly make the comparison.

masculinity and formal creation: now authorial genius must transcend mere literary inheritance by creating textual forms from thin air; "nor looks it for any *inspiration* less than divine" (68, italics mine). In this masculine fantasy of formal parthenogenesis, the material role of the press is briefly acknowledged, but only as a spur to discard "*accidental Originals*" in favor of the real thing. Through all this, the intellectual laborer remains male; the "Fathers of our Copyists" remain *fathers*.

In the courtroom, these parental metaphors are further submerged, but Justice Aston reveals their influence nonetheless when he remarks, in *Miller v. Taylor*, that he cannot "comprehend any property more emphatically a man's own, *nay, more incapable of being mistaken*, than his literary works" (English Reports 98:224, italics mine). Aston's mid-sentence interpolation turns a discussion of mere property into a discussion of a more fundamental connection between author and work. The key term in this shift is "mistaken"; for while one person's property can be quite easily mistaken for another's, Aston contends that anyone could perceive the link between a literary work and its author. Furthermore, Aston's use of "mistaken" implies that we perceive this link through a sense of immediate *recognition*. We don't analyze a written work, carefully combing it for signs of its author's voice, collecting evidence, building a case; we simply recognize it, as we would a face, a voice or a characteristic mannerism. In short, a literary work *looks like* its author in some sense; they share a family resemblance, a resemblance that is much more important the secondary question of which press issued the work.

This notion remains indispensable in modern Anglo-American legal discourse,

insofar as that discourse makes a distinction between idea and expression.<sup>128</sup> Partially in response to arguments (like Yates') that ideas cannot be private property, copyright law came to distinguish between pure thought and the language in which, to use Pope's metaphor, it is clothed. As the US Supreme Court would put it in *Baker v. Selden* (1879): "Where the truths of a science or the methods of an art are the common property of the whole world, an author has the right to express the one, or explain and use the other, in his own way."<sup>129</sup> A single idea could occur to many people, and therefore cannot be privately held under copyright law;<sup>130</sup> but no two people would express the idea in identical ways. Hence expressions can be treated as property, even when ideas cannot. Implicit in this argument is the notion that, by expressing ideas held in common in their "own way," authors must also be somehow *expressing themselves*. This interpretation is both held up and modified by later decisions establishing the "merger doctrine," which the opinion from *Kohus v. Mariol* (2003) clearly defines, citing *Concrete Mach. Co. v. Classic Lawn Ornaments, Inc.* (1988): "the merger doctrine establishes that 'when there is essentially only one way to express an idea, the idea and its expression are inseparable [i.e., they merge,] and copyright is no bar to copying that expression.'"<sup>131</sup> Some ideas—in the case of *Kohus*, the idea of a child's safety latch—

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<sup>128</sup> In the US, this distinction has a statutory basis; in the UK, it plays a role in case law, but has no statutory support. See Simon Stokes, *Art and Copyright* (Portland: Hart Publishing, 2001), 48-53.

<sup>129</sup> *Baker v. Selden*, U.S. Supreme Court, October 1879 (101 U.S. 99.).

<sup>130</sup> For simplicity's sake, my discussion sets aside patent law, which does enable some kinds of ideas to be privately held, in a sense, for brief terms. However, modern patents are much more limited than copyrights, both in their term and in the range of activities they protect: although a patented design may not be *implemented* or otherwise *embodied* by anyone other than the patent holder, the design, in so far as it is an idea, may be *represented* in full detail by anyone. In this way, the term "patent" retains a kernel of its ancient meaning: "open." Patents can be usefully contrasted with trade secrets, which are more fully closed: possession of trade secrets resembles an author's possession of a manuscript prior to publication.

<sup>131</sup> *Kohus v. Mariol*, No. 01-4089, US Court of Appeals, Sixth Circuit, 20 May 2003 (328 F.3d 848),

admit only a few very similar expressions, meaning that the possibility for *creative* or *original* expression is severely limited.<sup>132</sup> In effect, these expressions have been judged to look too much like their ideas, and too little like their authors, to be protected by copyright. Hence the sentiment Justice Aston expressed in *Millar v. Taylor*, that we recognize in a work something of its author, retains legal currency even now.

The merger doctrine further illustrates that for a work to be protected by copyright, it cannot be *too* abstract, *too* ideal, lest it lose its connection with its author. And what is the nature of that connection? How does a work resemble its author? Justice Aston might respond that it resembles the author's *mind*—but how can such a resemblance exist, unmediated by the sensory recognition of a face, a voice, or of the distinctive stroke of an author's pen on paper? The similarity of a child to its father, even according to Aristotelian notions of procreation, remains evidence of a *bodily* act. The discourse of copyright, despite its exaltation of the creative powers of the intellect, and of the infinite reproducibility of the immaterial text, cannot ever quite leave the body behind. This is the insight that I argue is reflected in "The Case of Samuel Richardson," and in another, very different way, in *Clarissa*.

This insight, however, does not exhaust Richardson's novel. If, in *Clarissa*, bodily labor enables the reproduction and propagation of virtue, it also conspicuously

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citing *Concrete Machinery Co. v. Classic Lawn Ornaments, Inc.*, No. 87-1491, US Court of Appeals, First Circuit, 1988 (843 F.2d 600).

<sup>132</sup> Arguably, many literary texts also push to its breaking point this distinction between idea and expression, by focusing so intently on the mode of expression—the form of the language—that it *becomes* the idea to be expressed. Whether this could or should disqualify such texts from copyright protection is unclear.

interferes. The guarantee of wider distribution of virtue justifies taking up the work of bodies, but the intrusion of an unwieldy body threatens virtue.

In *Clarissa*, these intrusions often read as interruptions in the smooth flow of language. A number of such interruptions appear at regular intervals as Clarissa forms and then abandons a plan to escape from her family under Lovelace's protection. After having written Lovelace requesting his assistance, she is plagued by sudden doubt: "Oh my dear Miss Howe!—what a sad, sad thing is the necessity, forced upon me, for all this preparation and contrivance!—But now it is too late!—But how!—*Too late*, did I say?—What a word is *that*!—what a dreadful thing, *were* I to repent, to *find* it to be too late, to remedy the apprehended evil!" (351). Later, after Clarissa has resolved not to go with Lovelace, she has further doubts, this time about her fate at the hands of her family: "if it be resolved that the ceremony shall be read over my constrained hand—why then—alas! What then!—I can but—but what?" (365). Given Clarissa's penchant for clean, structured prose, these brief passages are notable for their fragmentation. Scattered with dashes, interjections and interrupted thoughts, they reveal chinks in Clarissa's otherwise evenly-mortared linguistic facade. Elsewhere, Clarissa expresses her doubts in the trappings of reason; here, her doubts make themselves *felt*, as if they had delivered physical blows. Clarissa's emotions register themselves on her body, as her family perceives—her sister with scorn, and her aunt, with sympathy: "Why these sighs, why these heavings here, said she, patting my neck?" (366). Interjections and gaps are the epistolary analogue of those bodily sighs and heavings.

These interruptions reach their fever pitch as Clarissa waits to meet Lovelace



and inform him that she intends to remain with her family. As she waits, she writes:

It would be hard if I, who have held it out so sturdily to my father and  
uncles, should not—But he is at the garden door --

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I was mistaken!—How many noises *un*-like, be made *like* what one  
fears!—why flutters the fool so! ----

I will hasten to deposit this. (370)

As Clarissa becomes increasingly fearful, her writing begins to disintegrate; her sentences decay; verbs vanish; first slips into third person. Most tellingly, unusual punctuation appears: an asterisk marks the break between Clarissa's exit and return. This asterisk serves no grammatical or semantic function. It marks a point at which Clarissa's text has been entirely evacuated of meaning—of traces of Clarissa's mind. Nothing is left but a mark on a piece of paper; and at that very moment in the story, Clarissa's own body deceives her, causing her to hear Lovelace's approach in every sound, corroding the hegemony of her reasoning mind.

At the letter's close, Lovelace still has not arrived, and we do not learn what happened until after several letters have been exchanged. The resulting narrative is one of the most difficult moments in *Clarissa*: as Toni Bowers has observed, "when it comes to the all-important matter of agency, the episode at the garden gate has proven much more problematic than the rape."<sup>133</sup> Initially it seems that Lovelace is wholly to

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<sup>133</sup> Toni Bowers, *The Politics of Motherhood* (New York: Cambridge University Press, 1996), 221.

blame. Lovelace had anticipated Clarissa's decision to remain with her family, as well as her fear of being discovered, and had instructed Joseph Leman, his spy among the Harlowes' servants, to pretend to discover them and shout for help if Lovelace gave the signal. The ruse succeeds, and fear overwhelms Clarissa's capacity for reason:

Oh Lord!—help, help, cried the fool, all amaze and confusion,  
frightened beyond the power of controlling.

Now behind me, now before me, now on this side, now on that,  
turned I my affrighted face in the same moment; expecting a furious  
brother here, armed servants there, an enraged sister screaming and a  
father armed with terror in his countenance, more dreadful than even the  
drawn sword which I saw or those I apprehended. I ran as fast as he, yet  
knew not that I ran; my fears at the same time that they took all power of  
thinking from me adding wings to my feet" (380).

This brief narrative directly contradicts Belford's assertion, later in the novel, that Clarissa is "all mind." Here, she is all body; her emotions, which at other times attest to her acute sensibility and showcase her mindfulness, now occlude all thought, transferring executive function to her body.

Most importantly, Clarissa again shifts momentarily into the third person—"help, help, cried the fool"—echoing the self-mocking question she asked herself previously: "why flutters the fool so?" This echo underscores the resemblances between these two episodes; but it also reveals a fundamental difference. In the first case, the slip into third person was indeed a slip, written hastily in a moment of panic,

without premeditation. By contrast, this second slip appears during an extended narrative that Clarissa wrote well after the events she describes. The prose in which it appears is less jagged; fewer gaps break its flow; and the gaps that do appear, appear only in dialogue. The narration itself consists of perfectly formed and punctuated sentences, broken only by the occasional new paragraph. Such even prose indicates that Clarissa's choice to speak of herself as a fool in the third person is a carefully considered rejection of her panic, and its effects on her mind and body. In the first case, Clarissa's slip conveys distraction and confusion; in the second, Clarissa's considered shift empties her narrated self of subjectivity.

Why does Clarissa choose to make this shift a second time? From a certain perspective, this rejection buys Clarissa absolution. As Lovelace cynically puts it, while defending his actions to Clarissa, "the reluctance you showed to the last to leave your persecutors has cleared your conscience from the least reproach of this sort" (392). Clarissa's repeated refusals to join Lovelace appear to prove that Clarissa bears no responsibility for joining him in the end; she did so against her wishes. However, Lovelace's language conceals an ambiguity: he does not simply say that Clarissa's conscience is clear, but that it is clear "from the least reproach." In this subtle caveat, Lovelace reveals his inability to distinguish matters of conscience from matters of public reputation and reproach. Because Clarissa expressed such unwillingness to go, and therefore appears to have gone against her will, her conscience is clear from public reproach—but not necessarily from *private* reproach. Clarissa perceives something evasive in Lovelace's language, responding "Are you so light in your anger, as to dwell

upon words!" (392). This brief exchange between Lovelace and Clarissa turns on the fundamental incompatibility of their views about virtue. As Lovelace would have it, "He who seems virtuous does but act a part/And shows not his own nature, but his art" (143)—a notion perfectly repugnant to Clarissa, who detests the artifice she perceives in Lovelace's anger, as she writes and reflects on their conversation: "I have since thought that his anger was not owing to that sudden *impetus*, which cannot be easily bridled; but rather was a sort of *manageable* anger, let loose to intimidate me" (392). Clarissa perceives that Lovelace's righteous anger was a calculated act; in Clarissa's fearful escape, Lovelace perceives nothing more than another successful performance.

However, Clarissa's actions have already shown that in this particular case, she agrees with Lovelace. Her fear at the garden door was genuine, but her sprint to Lord M's chariot was *just an act*. It was a purely physical act, uncontaminated by her rational mind, her thinking self; her fear "took all power of thinking." By persisting in this claim, Clarissa fails to fully acknowledge her actions at the garden door as her own, instead suggesting that they were the actions of a body for which her self—her mind—was not fully accountable, either publicly or privately. Both Clarissa's sense of self-worth and her public reputation thus rest on a partial acceptance of Lovelace's reasoning. The absolution that Clarissa obtains thereby comes at a price: by disavowing those emotions and passions that lead her to rash acts, Clarissa forecloses the possibility of maintaining a subjectivity connected to her body. Such foreclosure is not, as some might surmise, the apotheosis of virtue for Richardson—for precisely the reasons that Belford will unwittingly express later. In order to live up to her full potential, she must

make peace with her body, a process the novel will represent both literally and figuratively in its closing episodes.

Having come thus far, we may say that virtue for Richardson does not subsist in the absolute subordination of body to mind, but in the harmonious relation of mind and body—a harmony that, in its most perfected form, yields the potential for virtuous reproduction. However, such harmony is not easily achieved or maintained. The fragmentation that appears in Clarissa's letters just prior to her abduction foreshadows the bodily response to her fear that will enable that abduction. But we err if we interpret this as evidence that Richardsonian virtue amounts to absolute control of mind over body. I conclude with a reading of the fragments of prose that Clarissa generates after her rape. The first—annotated with a parenthetical remark, "(Torn in two pieces)" (890)—becomes a synchdoche for Clarissa's violated body, the torn body of the page literally interrupting lines of already-disjointed text. A litany of self-reproach follows in the nine numbered fragments that follow, of which one line stands out in particular: "How art thou now humbled in the dust, thou proud Clarissa Harlowe!" (891). Although some critics have done so, it would be an error to read this as an insight; as Terry Eagleton observes, such writing must "be read in the light of the irrational guilt woman commonly experience after such violations."<sup>134</sup> However, to cast it aside as a mere manifestation of a bodily intrusion, without value or substance, is to repeat Clarissa's previous mistake, made after her abduction. Clarissa's body has something of value to tell her, although she cannot articulate it in words, yet; we should not expect it

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<sup>134</sup> Terry Eagleton, *The Rape of Clarissa* (Oxford: Basil Blackwell, 1982), 69.

to first manifest itself in logically consistent, coherent prose. However, these fragments do contain at least one well-formed insight, one that was lacking before. Clarissa speaks of the fragments of paper, of herself, before her: "some time hence, when all is over, and I can better bear to read them, I may ask thee for a sight of them. Preserve them therefore; for we often look back with pleasure even upon the heaviest griefs, when the cause of them is removed" (890)

## Chapter Four:

### *Tristram Shandy and the Death of the Patron*

In March of 1761, Laurence Sterne traveled to London. Sterne's trip was subsidized by Stephen Croft, who had invited Sterne to be his traveling companion after they crossed paths on the street. Upon arriving, Sterne and Croft established quarters on Chapel street at Nathaniel Cholmley's; but the next morning, Croft did not see Sterne at breakfast. Later in the day, Croft and Cholmley encountered a buoyant Sterne, who burst from Robert Dodsley's bookshop declaring that he was "mortgaging his brains to Dodsley for £50"—an advance on the six-hundred pounds Dodsley had offered for the copyright of the first two volumes of *Tristram Shandy*. Hoping for an even greater windfall, Sterne intended to haggle further. Croft and Cholmley dissuaded him, and when Sterne returned to Cholmley's later that day, he came "skipping into the room, and said that he was the richest man in Europe."<sup>135</sup>

Stephen Croft passed this anecdote on to his brother, John Croft, who in turn repeated it in a letter to Caleb Whitefoord. It is difficult to know what details may have been altered along the way, but whether we trust it as a document of Sterne's life, the story presents an eminently Shandean anecdote, with a plot almost too appropriate for a story about a master of digressive narration: a protagonist's impromptu excursion to London yields unexpected reward. The anecdote also provides a fitting example of

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<sup>135</sup> Charles Whitefoord, *The Whitefoord Papers*, ed. W. A. S. Hewins (Oxford: Clarendon, 1898), 227-228.

Sterne's eccentric sense of humor. He and Dodsley haggle over a "mortgage" that performs a comic dissection of the author, envisioning the sale of his copyright as an exchange not of abstract textual property, but of rights in a fragment of his own body. Sterne's witticism references the same crass materialism that *Tristram Shandy* satirizes in its first volume, as Shandy laments the circumstances of his conception, disrupted because his father had failed to wind a grandfather clock. Walter Shandy's neglect instigates a chain of events that "scattered and dispersed the animal spirits, whose business it was to have escorted and gone hand in hand with the Homunculus, and conducted him safe to the place destined for his reception."<sup>136</sup> Shandy's embryo<sup>137</sup> arrives in his mother's womb thoroughly traumatized, and his misfortunes have begun.

Notwithstanding these narratives' comic overtones, we should see in them more than satire. Sterne's mortgaged brain and Shandy's unescorted embryo both partake in what I read as an explicit commentary on the condition of authorship in the new regime of copyright. Once sold, Sterne's text becomes a fragment of its author, floating unescorted through the marketplace; and Shandy's embryonic body drifts, without aid or shelter, towards its resting place in his mother's womb, arriving "miserably spent" (1:3, *italics mine*). Through the figure of Tristram Shandy, in other words, Sterne imagines not a proprietary author, but an author who is himself property, destined to be bought and sold, owned and borrowed against, fragmented, reassembled and scattered into the fiscal winds. This new kind of author is the product of reconfigurations in the ancient

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<sup>136</sup> Laurence Sterne, *The Florida Edition of the Works of Laurence Sterne*, 3 vols., ed. Melvyn New and Joan New (University Presses of Florida: 1978), 1:2

<sup>137</sup> In early theories of human sexual reproduction, the term homunculus (latin for "little man") denoted a miniature being thought to reside in human sperm. After intercourse, the homunculus developed into a child in its mother's womb.



system of patronage, reconfigurations that had been brought about by copyright law. Resisting current scholarly representations of the rise of copyright and the concomitant formation of professional authorship as a moment of proprietary control and semantic closure, I read the figure of Shandy not as the “principle of thrift in the proliferation of meaning,”<sup>138</sup> but as a site of semantic unrest, profligate exchange and textual disorder. When it comes to matters of meaning, Shandy is a spendthrift, constantly introducing new contexts and paratexts, endlessly framing and reframing his circuitous prose. For that very reason, he is an author perfectly adapted for a literary marketplace dominated not by a few powerful patrons, but by the capricious and unpredictable demands of the mob.

In *Tristram Shandy*, Sterne paints a very specific portrait of authorship. Sterne views the author neither as a compact engine of self-expression nor as a subjectivity specially gifted to act as an antenna for inspiration. Shandy is not, in short, a precursor to the romantic author. But neither is he an empty center, a cypher who becomes, through his very absence, the origin of an “inexhaustible world of significations” (Foucault 104). Although Sterne casts his author as a kind of property, he does not see him as a commodity floating freely through the marketplace, transcendent and untouched by exchange. Instead, I argue, Shandy and his text accumulate meaning as they move unpredictably through the marketplace. The meaning of Shandy's text is not anchored by the authority of Patron or Author, nor by the homogenizing force of a nascent commodity fetishism. Instead, Shandy participates in a fully symbiotic

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<sup>138</sup> Michel Foucault, *The Foucault Reader*, ed. Paul Rainbow (New York: Pantheon, 1984), 118

relationship with the readers who both patronize and interpret him. The author and his textual fragments collectively embody Barthes' discursive 'textile,' but for Sterne this is not the condition of the author's death, but of the author's birth.

I present this reading of *Tristram Shandy* as an account of a specific contribution to a discussion of authorship and patronage that was already under way, rather than as an authoritative description of the state of authorship in Sterne's time. Sterne was one of many authors in the eighteenth century making local interventions into the politics of literary production. Less than a decade earlier, Johnson had written his famous letter to Lord Chesterfield refusing Chesterfield's support for his *Dictionary*; and earlier in the century, Pope and Swift had satirized the sycophancy and greed that lay beneath the surface of so many polite dedications. These phenomena do more than provide evidence that power structures underlying literary production were shifting; they also anticipate the insights of Barthes, Derrida and Foucault, whose contributions to the discussion of authorship I also read as local, rather than transcendental. Rather than offer a reductive and anachronistic application of such theories to the eighteenth century, however, I read their conversation about authorship allegorically. Barthes, Derrida and Foucault do not offer, or necessarily even claim to offer, eternal truths about authorship that one could simply apply to the historical study of authorship in the eighteenth century. However, their discussion of authorship remains important to this historical discussion in so far as it exemplifies a moment in time that speaks to another moment in the eighteenth century. These moments are structurally similar even as they remain significantly different in their particulars. While Barthes, Foucault and Derrida have viewed the

figure of the author as an artificial force of constraint to be evaded or transformed by the free-floating signifiers of discourse, Sterne and other eighteenth-century writers portrayed the *literary patron* as a force of constraint to be evaded by a new kind of independent author. This is a fundamentally different narrative. The specific form this independent author should take varied between accounts, but the motivation for these different accounts was the same: a recognition that power vacuums had grown as literary patronage became less important relative to the "patronage" that readers could offer, via booksellers, under the auspices of copyright law. Certainly the patron was no more dead than the author is today; rather, I argue that like Foucault and Barthes, Sterne and Johnson saw opportunities to generate and organize meaning in new ways at particular moments in time, and took advantage of them.

In developing this argument, I also want to avoid a teleological approach. Although I argue that figures such as Sterne and Johnson saw power vacuums in the literary marketplace, they did not seize them for some greater end, or as part of some grand authorial narrative. Instead, I maintain what might be called an evolutionary view of the process: small power vacuums appear and are filled as they appear, and as long as they keep appearing in a particular way, the evolutionary pressure is constant, and coherent change is effected. But this only happens if the pressure is consistent in a particular direction; if it is random, no aggregate change is likely to occur. In the case of Sterne, for example, one might argue that copyright was only a stepping stone on the way towards the full financial support of patronage. Sterne began his career seeking patronage, and once Sterne had acquired his fame via other means, he depended on

many favors of the sort that counted as patronage in the eighteenth century. The patron was not yet dead; the "niche" of patronage still existed and could still support authors; and it would be a gross exaggeration to say that any one copyright success story could spell the end of classic patronage, which in some forms remains with us today.

Likewise, "full" transformation of the concept of authorship could not take place except under steady pressure away from classic forms of patronage and towards more modern, copyright-oriented forms. A link does exist between the formation of the modern "author-function" and the rise of copyright, but it is not the rigid link that some have proposed it to be.

### **Patronage Before and After the Statute of Anne**

This chapter takes a broader view of patronage than do most discussions of the history of copyright. Perhaps because copyright law deals at length with economic concepts such as property and monopoly rights, historians of copyright often understand the forms of patronage that preceded modern copyright as fundamentally economic institutions. In *Authors and Owners*, for example, Mark Rose describes patronage as an "economic relation" (4) that provided authors with monetary grants and printing privileges. However, the benefits of patronage went well beyond such direct and indirect financial support. Even in the eighteenth century, the term "patron" retained strong associations with its Latin etymon *patronus*, "protector." Dryden spoke for all writers of his day in his dedication of *Marriage a-la-Mode* to the Earl of Rochester: "to

your lordship's favour we generally owe our protection and patronage"<sup>139</sup>; more than half a century later, Johnson's *Dictionary* still defined "patronage" primarily as "support; protection."<sup>140</sup> Accordingly, we should understand financial support as only one of several kinds of protection that patrons could offer to authors. Patrons could protect authors from want, but also from unwanted literary competition, from verbal or textual criticism, from political retribution, and indeed from threats of physical violence.<sup>141</sup> A patron's protection could also allow an author to develop and maintain relationships with individuals of higher social rank than their own—relationships that otherwise might be thought improper, but that could yield substantial rewards, including further offers of patronage.<sup>142</sup>

These different forms of protection were all arguably founded on the patron's (usually aristocratic) status; and indeed, this very authority is perhaps the most valuable benefit that a patron could provide to a professional writer. In his dedication of *Don Sebastian* to Philip, Earl of Leicester, Dryden says of his patron, "the leading men still bring their bullion to your mint, to receive the stamp of their intrinsic value, that they may afterwards hope to pass with human kind" (*Dramatic Works* 3:16). Patronage, Dryden suggests, is like the coinage of money: as silver bullion is certified pure by the

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<sup>139</sup> John Dryden, *The Dramatic Works* 6 vols., ed. Montague Summers (New York: Gordian Press, 1968) 3:190.

<sup>140</sup> Samuel Johnson, *A Dictionary of the English Language*, Vol. 1-2 (London, 1755), rpt. in *Eighteenth Century Collections Online*, Gale (CB3328752484), 2:320.

<sup>141</sup> Given that politicized disputes could become violent, and that much of the *quid pro quo* of patronage revolved around partisan scribbling, this is not as outlandish a possibility as it might at first seem. For an account of the "rough-and-tumble" aspects of eighteenth-century literary culture, see Dustin Griffin, *Literary Patronage in England, 1650-1800* (New York: Cambridge University Press, 1996), 20-21.

<sup>142</sup> For a detailed discussion of these advantages, see Griffin p. 13-45. See also Paul Korshin, "Types of Eighteenth Century Literary Patronage," *Eighteenth-Century Studies* 7.4 (1974), 453-473.

authority of the crown and stamped with its true value, so a writer's intrinsic worth is evaluated by a patron and made socially legible by his stamp. Under the patron's authority, a writer may become—at least in a socially sanctioned sense—an *author*.

However, the stamp of a patron's authority always comes at a price for authors. Writers of the late seventeenth and early eighteenth century were acutely aware of the debts they had incurred. Dryden modestly wrote to Lord Clifford of Chudleigh, "since all acknowledgements bear a face of payment, it may be thought, that I have flattered myself into an opinion of being able to return some part of my obligations to you" (*Dramatic Works* 3:348); while Pope, in his pride, took care only to accept invitations when he knew he could offer hospitality in return.<sup>143</sup> Furthermore, writers who depended on patrons for both sustenance and literary authority owed both monetary and interpretive debts. The threat of patronage to the independence of writers was therefore twofold, as Samuel Johnson must have recognized when he disavowed Lord Chesterfield's support in his famous letter of 1755. His ire in that letter might surprise readers who assume that patronage was only a form of monetary support, because Chesterfield's gesture of support had no monetary component. He simply penned a pair of reviews for *The World*.<sup>144</sup> Accordingly, modern commentators on the letter often assume that Johnson felt that Chesterfield's reviews implied financial support that had not been offered. However, this assumption is unwarranted since Johnson's letter

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<sup>143</sup> According to Dustin Griffin, Pope "accepted invitations to grand country houses, for example, so long as he could invite his host to his more modest villa at Twickenham and keep accounts even" (129).

<sup>144</sup> For an enlightening discussion of Chesterfield's reviews, see Nicholas Hudson, *Samuel Johnson and the Making of Modern England* p. 36-37. For the text of the reviews, see Adam Fitz-Adam, *The World*, 3rd ed, Vol. 2 (London, 1761), rpt. in *Eighteenth Century Collections Online*, Gale (CW3310679016) 293-305.

portrays the very act of writing reviews as unwanted patronage:

The notice which you have been pleased to take of my labours, had it been early, had been kind; but it has been delayed till I am indifferent, and cannot enjoy it: till I am solitary, and cannot impart it; till I am known, and do not want it. I hope it is no very cynical asperity not to confess obligations where no benefit has been received, or to be unwilling that the public should consider me as owing that to a patron, which providence has enabled me to do for myself."<sup>145</sup>

Even Chesterfield's public notice of Johnson, his good word independent of any deed, would have been valuable if it had come early enough; but as Johnson claims, the notice has come after he is already "known" to the public, and he is unwilling to have it believed that he owes that public knowledge to Chesterfield's authority. Insofar as it is about public *knowledge*, Johnson's complaint has little to do with the money economy, and much to do with the semantic economy; the meaning of his work, Johnson asserts, should be understood in terms of his own fame and authority, rather than the fame and authority of Chesterfield.<sup>146</sup>

Although it is perhaps the most famous disavowal of patronage, Johnson's letter was not by any means the first. In his biography of Pope, Maynard Mack famously suggested that the contract between Pope and Bernard Lintot for Pope's translation of

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<sup>145</sup> James Boswell, *Life of Johnson*, ed. R. W. Chapman (New York: Oxford University Press, 1980), 185.

<sup>146</sup> I use the phrase "semantic economy" here with hesitation, since such metaphorical deployments of the term "economy" verge on cliché. But it remains the most apt metaphor I can think of for a system of valuation based on the aggregate behaviors of networks of individuals.

the *Iliad* foretold the fall of patronage long before Johnson's letter<sup>147</sup>; and as his dedications illustrate, even Dryden could buck genteelly under the yoke of patronage. His dedication of *The Spanish Friar* to John Holles, Lord Haughton, for example, contains a lengthy commentary on his writing strategies, at one point declaring almost haughtily, "I will settle myself no reputation by the applause of fools" (*Dramatic Works* 5:120). The implication is charming enough: Dryden would not be seeking Haughton's approval if he were a fool, so he must not be. However, this line of reasoning subtly requires us to consider and acknowledge the worth of Dryden's judgment as well as Haughton's. Dryden closes the same dedication with a short paragraph in which he acknowledges that he has written something more resembling a preface than a dedication, admitting, "it was thus far my design, that I might entertain you with somewhat in my own art, which might be more worthy of a noble mind, than the stale exploded trick of fulsome panegyrics" (5:122). Here again, whatever flattery Dryden offers can only be received by a patron who accepts Dryden as an authoritative commentator on his own work: Haughton's mind is noble precisely because it can discern between Dryden's worthy "art" and "stale exploded trick[s]." Although these moments must be understood in the context of Dryden's many other "fulsome panegyrics," they nonetheless show that Dryden's instincts were not those of a mercenary flatterer, but of a writer who reflected constantly on the forms of patronage and the ways they could serve his career and broaden his influence.<sup>148</sup>

We should not see Dryden as an uncritical participant within the patronage

<sup>147</sup> Maynard Mack, *Alexander Pope: A Life*, (New York: W. W. Norton & Co., 1985), 863.

<sup>148</sup> For a fuller discussion of Dryden's place within the patronage system, see Griffin, p. 70-98.



system; still, his subtle resistance hardly constitutes evidence of patronage's decline. As Dustin Griffin observes, Dryden's attitude towards patronage reflects his "anomalous position within it... As a university-educated gentleman, allied by marriage with the aristocratic Howard family, Dryden could mingle with the world of patrons in a way that a writer like Oldham could not" (76). However, Dryden's attitude towards patronage does appear to have served in some respects as a model for later poets with ambitions of independence. Pope's vaunted independence from patronage—"thanks," as he says, "to *Homer*,"<sup>149</sup> that is, to the income from subscriptions to his translations of the *Iliad* and *Odyssey*—seems like the next logical step after Dryden's quiet pride. However, even Pope's independence was not a matter of simple "progress" away from patronage. Pope's profits from the venture were made possible specifically by the passage of the Statute of Anne, the first modern copyright law, in 1710. Without the protection of copyright, few publishers would have undertaken such a large and risky venture, even by subscription.<sup>150</sup> Pope, in other words, ought to have saved some room in his couplet to thank Parliament alongside Homer. And while the Statute of Anne may have enabled Pope to achieve financial independence, it did not directly change any of the entrenched practices of patronage. Many writers still enjoyed the financial support of patrons, and even those who did not, such as Pope, still depended on the system of

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<sup>149</sup> Alexander Pope, *The Second Epistle of the Second Book of Horace* (Dublin, 1737), rpt. in *Eighteenth Century Collections Online*, Gale (CW3316947388), 7.

<sup>150</sup> William St. Clair discusses the economics of publishing prior to 1710 in *The Reading Nation in the Romantic Period* (89). Even after 1710, the publishers of any work as large, expensive, and potentially popular as Pope's translation stood to lose a great deal if the work were pirated; but between 1695 and 1710 the risk was even greater because no form of copyright protection existed at all. As a result, argues St. Clair, publishers tended to focus on brief, inexpensive serial publications. Prior to 1695, the "copyright" that did exist offered no guarantee of benefit to authors.

patronage for other purposes.

Pope's claims of specifically monetary independence seem fairly accurate. For example, the proceeds from his translation of the *Illiad* enabled him to purchase his villa in Twickenham, which in turn allowed him, later in his career, to repay any debts of hospitality he accrued from his highly-placed supporters (Griffin 129). This financial ascent may well have enabled him to criticize members of the patron class in unprecedented ways. However, Pope's financial independence did not preclude other kinds of dependence. As Johnson observed in *Lives of the Poets*, Pope “seems to have wanted neither diligence nor success in attracting the notice of the great.”<sup>151</sup> The simple fact that Pope had so many friends among the patrons of the day suggests that Pope relied on the other kinds of support that patrons could provide. We can find one of many examples in Pope's ploy of having the copyright of the *Dunciad* registered in the names of three peers—the Earls of Bathurst, Burlington and Oxford—who, as peers, were exempt from prosecution under libel law. Even our understanding of Pope's economic independence shifts when we consider that many subscribers to Pope's translation were peers and patrons, that some subscribers paid for many copies of the translation while accepting only one, and that Pope successfully enlisted supporters among the patron class to essentially act as salesmen, securing additional subscriptions to the venture (Griffin 125-126). Pope, like Dryden, wanted to influence the literary tastes of his day, and, like Dryden, he did so largely through the well-established channels of traditional patronage.

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<sup>151</sup> Samuel Johnson, *The Lives of the English Poets*, 3 vols. (Dublin, 1780-81), rpt. in *Eighteenth Century Collections Online*, Gale (CW3303109318), 2:274.

As the eighteenth century wore on, the steady influence of the Statute of Anne created more and more opportunities for writers to secure financial support from outside the usual structures of patronage; by mid-century, the textual economy of Great Britain was a mixed one. Some writers were able to support themselves largely through the sale of copyright in their texts; others still depended heavily, or at least substantially, on different forms of patronage. Edward Young, although he benefited from "copy-money" as it was called, continued to petition for the support of various patrons at least until 1758, when he wrote the Archbishop of Canterbury, Thomas Secker, asking for support.<sup>152</sup> His years of petitioning paid off remarkably well: by 1765, the year of his death, Young's estate was worth a substantial 14,000 pounds<sup>153</sup> although he was never granted the bishopric he sought. In addition to illustrating the continued importance of patronage throughout the middle of the eighteenth century, Young's example encourages us to reconsider the association between the idea of "original genius" and the rise of copyright; Young's *Conjectures on Original Composition* played an important role in the articulation of ideas such as originality and genius, and yet Young himself sought recognition as a genius, and the support that could accompany that recognition, from the powerful as well as the public. Although new conceptions of originality and genius certainly proved useful in defending copyright law, it would be a mistake to say that they arose in tandem with copyright, since such ideas already formed part of the rhetorical toolbox of authors seeking patronage of various kinds, and

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<sup>152</sup> *The Correspondence of Edward Young*, ed. Henry Pettit (New York: Oxford University Press, 1971) 473-474.

<sup>153</sup> Harold Forster, *Edward Young: Poet of the Night Thoughts* (Alburgh: The Erskine Press, 1986), 375.

were only later adapted to the ends of copyright maximalism.<sup>154</sup>

Together, these examples suggest a specific narrative about patronage in the eighteenth century. Historians of copyright often argue that the licensing acts of the sixteenth and seventeenth centuries combined copyright and censorship in a single social institution,<sup>155</sup> and that the Statute of Anne was the first law to differentiate between politically motivated restrictions and economically motivated restrictions on printing, authorship and bookselling. A similar argument exists with respect to patronage. Prior to the Statute of Anne, the institution of patronage combined financial, legal and social protections in an undifferentiated way. The passage of the Statute of Anne effectively drove a wedge between these types of protection, rendering at least some of the financial protections afforded by patronage obsolete.<sup>156</sup> However, the Statute of Anne did not supersede the legal and social benefits of patronage; and while political censorship, sundered from copyright, was maintained through other legislation, the statute of Anne left the non-monetary benefits of patronage largely unlegislated. It may have granted authors monopolies on the texts they wrote, but it did not attempt to legislate *authority*. The result was a bifurcation in patronage; the importance of economic patronage dwindled in the face of competition from copyright, but what I will

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<sup>154</sup> For discussions linking the rise of copyright and the discourse of original genius, see Woodmansee, Martha, "The Genius and the Copyright" and Mark Rose, *Authors and Owners*. Rose persuasively argues that Young—at Samuel Richardson's behest—links the concept of originality to the concept of "ownness," and that furthermore, this ownness "inevitably takes on a commercial aura" (117). However, he reflexively links its commercial aura to the marketplace of copyright rather than to the marketplace of patronage. When Young speaks of the "noble title of an *Author*," Rose thus reads it as a suppression of that commercial aura, rather than an attempt to lubricate the wheels of patronage by elevating the author's social stature.

<sup>155</sup> See Rose, *Authors and Owners*; Ronan Deazley, *On the Origin of the Right to Copy*; William St. Clair, *The Reading Nation in the Romantic Period*; and Joseph Loewenstein, *The Author's Due*.

<sup>156</sup> The full scope of this obsolescence is debatable, but in the case of at least some texts, the profit from "copy-money" was so vast that it dwarfed the sums available to writers through patronage.

call semantic patronage—the protection of a text's *meanings* in the marketplace—lingered in many forms, exerting influence over the book trade into the late eighteenth century and beyond.

### **Sterne and Patronage**

Laurence Sterne's career as a recipient of patronage must be understood in the context of this bifurcation. Sterne spent much of his youth as a dependent of his uncle, the elder Richard Sterne. His later education at Jesus College, Cambridge was partially funded by his cousin, the younger Richard Sterne. After his graduation in 1737 and his ordination the next year, Sterne depended on the influence of another uncle, Jaques Sterne, to secure him a living as vicar of Sutton-on-the-Forest. In the context of the highly-politicized Anglican church of his time, this favor demanded repayment; like many influential figures in the church, Jaques Sterne was a staunch Whig, and expected the support of his nephew's pen. Sterne wrote political journalism on behalf of local Whig interests for several years to repay his uncle's favor and secure further advancement.<sup>157</sup>

During these early years, then, Sterne was one of many writers who secured support for themselves by writing "for a Faction in the name of the Community."<sup>158</sup> However, Sterne became dissatisfied as his political screeds earned increasingly bitter rebukes, and he would eventually decry the practices of "party-writing" as "not only

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<sup>157</sup> Ian Campbell Ross, *Laurence Sterne: A Life* (New York: Oxford University Press, 2001), 2-3, 32-48

<sup>158</sup> James Ralph, "The Case of Authors by Profession or Trade," quoted in Korshin 462.

beyond the Rules of Decency but *Morality*."<sup>159</sup> Sterne's uncle, however, did not consider Sterne's debt repaid, and the ensuing rift between them limited Sterne's prospects for further advancement in the church. Nonetheless, he continued to seek ecclesiastical preferment from moderately important figures in the church such as John Fountayne, who became the dean of York Minster in 1747 (Ross 183-184). Finally, in spring of 1759, he began writing the first volumes of *Tristram Shandy*; just a year later, Sterne was in London, capitalizing on his newfound celebrity from the success of *Tristram Shandy*. Sterne had sought the aid of John Fountayne for many years, with little to show for it. His newfound fame enabled him to sue for and receive preferment directly from the Archbishop of York himself (Ross 257)—who "was so delighted with *Tristram Shandy* that he supposedly reread the first two volumes every six weeks" (Ross 205).

Sterne's sudden success in securing influence in the church shows how structures of patronage were changing. The number of ordained ministers seeking preferment within the church vastly outnumbered church livings of the sort that Sterne sought<sup>160</sup>—livings that had constituted the "primary form of patronage" for several poets including Edward Young (Griffin 29). After seeking this kind of support unsuccessfully for many years, Sterne rapidly changed his fortune by circumventing the usual channels of patronage, instead turning directly to the copyright-driven literary market. The mechanisms of copyright had created new opportunities for writers to support themselves; but once Sterne had availed himself of those opportunities, he

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<sup>159</sup> York Gazetteer, 2 Nov. 1742, qtd. in Ross 89.

<sup>160</sup> Frank Donoghue, "Laurence Sterne and the Fantasy of Individual Patronage," *Biography*, 18.2 (1995), 100.

quickly turned back to traditional forms of patronage to capitalize on his gains. Furthermore, even Sterne's turn to the marketplace for support depended, in a subtle way, on a kind of patronage. Although he was not a conventional patron, and did not provide Sterne with monetary support, David Garrick wielded substantial influence and literary authority in London, and Sterne's success may well have depended on his support—support that Sterne eagerly sought, and secured in part through the ploy of having Sterne's then-mistress, Catherine Fourmantel, an acquaintance of Garrick, send a letter to Garrick written by Sterne and copied into her own hand, praising his newly-published novel (Ross 214, 247-248). Although atypical, Garrick's support could easily be conceived as a form of semantic patronage. The story of Sterne's success with *Tristram Shandy* thus illustrates the complex ways in which copyright and patronage could be profitably combined in the eighteenth century.

### **Tristram Shandy's Dedications**

With Sterne's relationship to the changing system of patronage in mind, I now turn to his own dedications. *Tristram Shandy* contains several dedications;<sup>161</sup> my discussion will focus on the first two, since both appear in the first volume and deploy conventional dedicatory rhetoric in unexpected ways. The first appears simple at first glance; after Dodsley agreed to sell a second run of the first two volumes of the novel,

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<sup>161</sup> The other dedications were to later volumes of the novel. Sterne dedicated the fifth volume to Lord Viscount John Spencer, with whom Sterne cultivated a friendship in his later years; this is his most traditional dedication, but like the dedication to Pitt, it does not contain any request for protection describing itself rather as a gift. The ninth volume begins with a dedication by Shandy, entitled "A Dedication to a Great Man," and containing a possible echo of the dedication of Dryden's *Don Sebastian*: "Honours, like impressions on coin, may give an ideal and local value to a bit of base metal, but Gold and Silver will pass all the world over without any other recommendation than their own weight" (2:733).

Sterne decided to include a dedication to then-Secretary of State William Pitt (Sterne 3:37-38). The dedication is succinct, filling only three small octavo pages and comprising just two paragraphs modeled on the first and last paragraphs of longer dedications, such as those written by Dryden. The first paragraph offers a typical gesture of modesty, insisting that "Never poor Wight of a Dedicator had less hopes from his Dedication," and describing the author's provincial surroundings. The second paragraph echoes the common dedicatory practice of closing with a request that the dedicatee take the work under protection; however, here Sterne's request takes an unexpected sylleptic detour at the last moment: "I humbly beg, Sir, that you will honour this book by taking it---(not under your Protection,----it must protect itself, but)--into the country with you." Sterne's sly insertion arrives just at the grammatical point of no return. He speaks of "protection," the foundational concept of patronage, only to discard it. Whereas in a conventional dedication, the patron would "take" the book in a purely metaphorical sense, Sterne's dedication literalizes the word; he asks Pitt to take physical possession of the book and carry it with him into the country. In the context of conventional patronage, it would do little good for a patron to take a single copy of a book under protection; the "book" to which conventional dedications refer is an abstraction—not a physical book, but a "work," a text. Through a single grammatical sleight of hand, Sterne turns Pitt, the honored patron into Pitt, a humble reader.

By playing on this distinction between physical copies of books and abstract texts, between book tokens and book types,<sup>162</sup> Sterne touched on ideas that were being

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<sup>162</sup> I refer here to a schematic distinction between "token" and "type" introduced by C. S. Peirce and taken



discussed regularly in British courtrooms of the time.<sup>163</sup> Although Sterne's dedication initially appears to have little to do with copyright, the distinction between book tokens and types with which Sterne toys was the subject of many legal debates over copyright law. Cases such as *Millar v Kincaid* (1751), *Tonson v Collins* (1762) and *Millar v Taylor* (1769) all turned on the question of whether the British common law granted property rights in abstract textual "works" or only in tangible, material objects, such as physical copies of books. Supporters of perpetual copyright argued that the common law<sup>164</sup> granted authors property in the very works that patronage served to protect. And while the relationship of author to work under copyright differs in key respects from the prior relationship of patron to work, the latter relationship also had proprietary aspects. As Dryden says to the Earl of Orrery, speaking of his play *The Rival Ladies*, "It was yours, my Lord, before I could call it mine" (*Collected Works* 2:133). Certainly, at any rate, the patron had a special connection to the work that went well beyond possession of a single copy

Sterne's dedication thus occupies a pivot between copyright and patronage; it

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up by many philosophers of language, which lines up neatly with the book-work distinction that I argue Sterne makes in his dedication. In short, a type is an abstract category, while a token is an instance of that category—an object that in some sense belongs to that category. Thus *Tristram Shandy* the work is a type, a copy of *Tristram Shandy* is a token. For a lively and brief introduction to the distinction, see W. V. O. Quine, *Quiddities*.

<sup>163</sup> For a discussion of Sterne's direct commentary on copyright and *Tristram Shandy's* play with the type-token distinction, see Shaun Regan, "Print Culture in Transition: *Tristram Shandy*, the Reviewers, and the Consumable Text," *Eighteenth Century Fiction* 14.3-4 (2002), 303-309.

<sup>164</sup> The term "common law" refers to legal practices and doctrines not encoded in statute, but embedded in the long history of British case law, much British law having to do with property has never been encoded, and remains part of the common law. The Statute of Anne granted authors a limited-term monopoly right to print their works, but the law itself never used the term "property" to describe that right. After failing to persuade parliament to extend the term of copyright protection in the 1730s, powerful booksellers attempted to extend the term by arguing that in the past, the common law (i.e. case law) had protected authors' "property" in their works. Evidence that they were correct is slim, for fuller discussions of these arguments and responses to them, see Deazley, *On the Origin of the Right to Copy* and Rose, *Authors and Owners*.

snatches the work out of the patron's hands, replacing it with a single copy, a mere sheaf of bound paper. However, it would be a mistake to say that Sterne views this as an author-take-all arrangement. Freed by copyright from financial dependence on traditional patronage, Sterne nonetheless understands that he remains dependent on his readers for financial support and for authority, just as earlier authors were on their patrons. Although the "work" has been placed back in Sterne's hands, Sterne himself is placed in his readers' hands, in the form of a book; no patronly authority stands between the author and his readers any longer. Alone and bereft of patronage, embodied in many copies and circulating from hand to hand among readers, *Tristram Shandy* "must protect itself."

As I read Sterne's dedication, the transformation of the patron into a reader has a number of important consequences. With its newfound freedom to circulate among readers, its meaning unhampered by the modulating influence of a patron, the physical book itself becomes a token not simply of the work, but of the link between author and reader—in this case, a link of sentiment. Sterne asks William Pitt to carry this token with him into the country, "where," he says, "if I am ever told, it has made you smile, or can conceive it has beguiled you of one moment's pain---I shall think myself as happy as a minister of state;----perhaps much happier than any one (one only excepted) that I have ever read or heard of." Through the physical channel of the book, Sterne's sentiments and his reader's unite, and the reader's happiness becomes the author's. The book thus acts as a token of sentimental exchange, a kind of emotional coinage; and since it lacks the patron's authoritative stamp, the book's value is determined exclusively

by the circumstances of its exchange.<sup>165</sup>

Sterne closes with a gesture towards the tradition of panegyric, while reiterating his new-found independence: "*I am, great Sir, / (and what is more to your Honour,) / I am, good Sir, / your Well-wisher, / and most humble Fellow-Subject, /* THE AUTHOR." For a politician who had come to be known as the Great Commoner, this closing is certainly appropriate. It praises without seeming to flatter, is modest without groveling. It casts its author not as a "servant," as do so many dedications, but simply as a fellow-subject, avoiding any implication that Sterne and Pitt are on different social planes. For that very reason, Sterne's dedication is able to remain consistent in its disavowal of protection, as it could not have if Sterne were seeking a traditional kind of patronage.

*Tristram Shandy's* second dedication differs dramatically from its first. It appears within the novel's metafictional frame. Having been written by Shandy himself for his autobiographical work, it offers a much more pointed—not to mention bizarre—satire of the genre. While it is not addressed to anyone in particular, it is far from flattering, even verging at times on insult. Nor is it even recognizable as a dedication at first—it begins as a chapter on hobby horses, which I excerpt here at length simply to convey its disorienting trajectory: "*De gustibus non est disputandum*;--that is, there is no disputing against HOBBY-HORSES; and, for my part, I seldom do..." (12). Shandy goes on to describe his own travels on hobby horses—"to my shame be it spoken, I take somewhat longer journeys than what a wise man would think altogether right.----But the truth is,---I am not a wise man..." (13)—as well as the travels of

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<sup>165</sup> This moment thus bears comparison to the much-discussed snuff box episode in Sterne's *Sentimental Journey*.

great Lords and tall Personages... such, for instance, as my Lord A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, and so on, all of a row, mounted upon their several horses;--some with large stirrups, getting on in a more grave and sober pace;----others on the contrary, tuck'd up to their very chins, with whips across their mouths, scouring and scampering it away like so many little party-colour'd devils astride a mortgage. (13)

As the chapter closes, Shandy finally begins to slip into the language of a dedication by addressing an anonymous peer whom he calls "My Lord." When it comes to hobby horses, only one circumstance really upsets him:

when I see one born for great actions, and, what is still more for his honour, whose nature ever inclines him to good ones;----when I behold such a one, my Lord, like yourself, whose principles and conduct are as generous and noble as his blood... when I see such a one, My Lord, mounted, though it is but for a minute beyond the time which my love to my country has prescribed to him, and my zeal for his glory wishes,-- then, My Lord, I cease to be a philosopher, and in the first transport of an honest impatience, I wish the HOBBY-HORSE, with all his fraternity, at the Devil. (13-14)

This impassioned tirade is followed by a brief and comically understated paragraph insisting that "notwithstanding its singularity in the three great essentials of matter, form and place," the above chapter is a dedication.

The following chapter provides the punchline. Given that the above was written

"for no one Prince, Prelate, Pope, or Potentate,--Duke, Marquis, Earl, Viscount, or Baron," Shandy concludes that it would offend no one if he were to offer "it up fairly to publick sale; which I now do" (15). In the following sales pitch, he characterizes the usual method of securing patronage as "higgling for a few guineas in a dark entry" (15), while he, by contrast, is dealing "squarely and openly with your Great Folks" (15). Furthermore, the dedication is not "a gross piece of daubing" as are some; he speaks of its "colouring" and "drawing"; he measures it "in the painter's scale," assigning ratings out of twenty for outline, composition, coloring, expression and for design, of which he says: "if I may be allowed, my Lord, to understand my own *design*, and supposing absolute perfection in designing to be as 20,--I think it cannot well fall short of 19" (16). Interested parties, he suggests, should pay 50 guineas<sup>166</sup> care of Mr. Dodsley, and in return, Shandy will place the appropriate "titles, distinctions, arms, and good actions" (16) at the beginning of the previous chapter, all of which will be dedicated to the patron, as well as "whatever else in this book relates to HOBBY-HORSES, but no more..." (16). Finally, Shandy strikes upon the most appropriate patron for his work, dedicating the remainder of the work to the moon—who "has most power to set my book a-going, and make the world run mad after it..." (16). He concludes: "*Bright Goddess*, / If thou art not too busy with CANDID and Miss CUNEGUND'S affairs,--take *Tristram Shandy's* under thy protection also" (16-17).

Like Sterne's dedication to William Pitt, this breathless parody deftly manipulates the formal conventions of dedications. Once one realizes that the chapter is

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<sup>166</sup> The usual "rate" for gifts to authors from dedicatees was ten pounds or occasionally twenty, but almost never more than thirty (Korshin 467).

a dedication in disguise, a second reading reveals that Shandy has opened with the requisite gesture of modesty—"the truth is,---I am not a wise man"—and has ended with a bona-fide, if backhanded, attempt at flattery, which resembles Sterne's closing praise of Pitt in its description of "my Lord" as "one born for great actions," but "whose nature ever inclines him to good ones" (1:16).<sup>167</sup> The sudden shift of direction in Sterne's dedication finds a counterpart in the bewildering and irreverent prose that begins Shandy's; however, the direction of the shift is reversed. Sterne's dedication sets out in the style of a typical dedication and then diverges in tone and content; Shandy's, in a chiasmic inversion of Sterne's, begins as a digression and ends with a dedication.

Shandy's dedication also inverts Sterne's in other senses. If the first dedication amounts to a quiet assertion that Sterne's work is not for sale, Shandy constructs a bold storefront complete with prominent signage and hawkers on the corner. The chapter that follows Shandy's dedication pushes to its breaking point the commonplace that writing dedications amounted to nothing more than, as Young put it in 1719, "prostitution of the pen" (*Collected Works* 2:129). Young's phrase suggests the very sort of "higgling for a few guinies in a dark entry" that Shandy claims to abhor, and to which his innovations in patronage offer an alternative. Surely the transactions of patronage, conducted openly in a public forum, could no longer be compared to prostitution.

However, Shandy's strategy has its side-effects. By offering his dedication openly for sale, Shandy deprives any would-be patron of special authority. After all, the authority conveyed by patronage goes hand-in-hand with the assumption that the

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<sup>167</sup> As Melvyn New observes in his annotations to the Florida Edition, turns of phrase such as this were eighteenth-century commonplaces (3:61).

tasteful patron has singled, out of many, a particular work or author worthy of support. If we think of patrons as buyers, patronage is always a buyer's market. The public sale of goods, on the other hand, suggests a seller's market in which prices are driven up by demand, and in which buyers are essentially interchangeable, anonymous, and unable to convey much prestige to the product.<sup>168</sup> Although the financial details of the transaction between Shandy and his patron-consumer would be identical to those between parties in traditional forms of patronage, the power structure underlying the exchange would entirely different. In a hybrid literary marketplace, in which copyright has begun to supplant financial patronage, Shandy's version of patronage—a form of financial patronage *without* semantic patronage—seems to be a chimera, an absurdity.

Or is it? In fact, the relationship between author and patron in Shandy's sales pitch more closely resembles the relationship between author and book-buyer under the letter of the law of copyright. Books—that is, physical copies of books—had been put "up for public sale" for centuries; and the passage of the Statute of Anne enabled authors to benefit more directly from the profits generated thereby—in effect, turning all book-buyers into potential financial patrons.<sup>169</sup> Like Sterne's dedication, Shandy's thus plays on the distinction between reader and patron—this time by emphasizing the

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<sup>168</sup> Of course this argument glosses over a few details. Certainly high-profile buyers can bring prestige to a product sold publicly; however those high-profile buyers are likely to receive many such products for free, as do present-day celebrities in what amounts to a system of semantic patronage. See Waxman, Sharon, "Celebrity Freebies: A Force Irresistible?" *The New York Times*, February 15, 2006.

<sup>169</sup> The role of booksellers as middlemen complicates this argument somewhat; booksellers retained much control over the literary economy, and in practice often reached lopsided agreements with the authors they published. A book's popularity among readers therefore did not always translate into more profits for the author. Nonetheless, the Statute of Anne gave authors much more flexibility to bargain with booksellers than they had previously had, as demonstrated by Sterne's own example: since he began his rapid ascent in the literary world by self-publishing—thus retaining control of his copyright in *Tristram Shandy*—he was able to negotiate with Dodsley from a position of considerable strength (Ross 6-7). For a fuller discussion of the types of contracts booksellers often signed with authors, see St. Clair, 160-166.

financial aspect of patronage. If we set aside the patron's traditional role as protector, retaining only the financial aspect of patronage, then the difference between patrons and readers (as book-buyers) under the regime of copyright disappears.

Read this way, Shandy's dedication erodes the distinction between reader and patron from one direction, while Sterne's dedication erodes that distinction from another. Sterne's dedication demotes Pitt from patron to reader by flattening the hierarchical relationship between them, asserting that Sterne's book can protect itself and therefore does not need the aid of Pitt's authority. In short, his semantic patronage as a public figure is unnecessary. Instead, as the Great Commoner, Pitt stands in for all readers. Pitt's relationship to the text ceases to be authoritative, but it remains important as a paradigmatic example of a reader's relationship to an author. Shandy's dedication, on the other hand, cries out for a kind of financial patronage that Shandy could just as easily receive from ordinary readers, through the mechanisms of copyright. Furthermore, he offers in return a variety of praise so generic that it could be applied to anyone—bringing to mind common complaints that dedications praised indiscriminately.<sup>170</sup> If he were to do otherwise, how could he sell his dedication publicly? Shandy's public sale thus leaves no way for patrons to distinguish themselves from other readers, other than by footing a larger bill. However, this does not thereby demolish the patron's importance entirely; the author simply depends on all readers

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<sup>170</sup> Young's dedication of *Busiris, King of Egypt* to the Duke of Newcastle, in addition to likening dedication-writing to prostitution, says "How pleasant it is, to hear one of yesterday [i.e. one of the *nouveau riche*] complimented on his illustrious ancestors! a sordid person, on his magnificence! an illiterate pretender, on his skill in arts and sciences! or a wretch contracted with self-love, on his diffusive benevolence to mankind!" (*The Complete Works*, 2 vols, ed. James Nichols (Hidesheim: Georg Olms Verlagsbuchhandlung, 1968) 2:129). Young condemns dedication-writing so strongly that, despite his compliments to Newcastle, it becomes difficult to read his dedication as entirely devoid of irony.



collectively for financial support. Together, these two dedications work to repudiate both financial and semantic patronage, while simultaneously reinscribing them within the author-reader relationship.

The portrait of the author-reader relationship that emerges from these two dedications is clearly idealized. Even if we limit ourselves to Sterne's own example, his extensive history of seeking and securing patronage would belie any claim that these two dedications accurately reflect the condition of authorship during the 1760s. What is remarkable, then, about Sterne's vision of authorship in *Tristram Shandy* is its generosity.<sup>171</sup> The fantasy of authorship that Sterne develops, both through his dedication and through the figure of Shandy himself, is exceptionally inclusive. Consider Sterne's dedication of the novel to Pitt. Sterne has no debt to repay to him since Pitt has granted him no preferment, and Sterne speaks no words of thanks. Nonetheless, Sterne hearkens to the language of earlier dedications when he appeals to Pitt's judgment, desiring Pitt to take pleasure in the novel and insisting that Pitt's particular pleasure will reflect back on Sterne, increasing his own. Sterne seeks Pitt's approbation despite the fact that he and Sterne had no personal or professional connection; apart from Pitt's public successes in government, he was no different from any other anonymous reader for Sterne. Furthermore, the dedication draws almost no attention to Pitt's work in the government or to his political views, barely even hinting at his eminence by calling him "great Sir," and very obliquely referring to his status as a "minister of state." Not a single word in Sterne's dedication suggests that his interest in

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<sup>171</sup> We should remain attentive to the self-serving aspects of this generosity; after all, it helps to create an illusion of intimacy and inclusion, which in turn helps to sell books.

Pitt's enjoyment arises from anything other than his belief, professed in the first paragraph of the dedication, that "every time a man smiles,--but much more so, when he laughs, that it adds something to this Fragment of Life." Sterne's dedication is, in the end, not simply a dedication to Pitt, but a dedication to all his readers, one which expresses the utmost concern for their response to Sterne's novel.

At the same time, this concern is not expressed as an assertion of Sterne's own authority. In the context of Johnson's letter to Chesterfield, one might be inclined to see Sterne's rhetoric as a similar attempt to secure greater literary authority for himself. We can reasonably infer from the language of Johnson's letter, and from the many "bad words" that Johnson identifies in his dictionary, that Johnson sought authority to dictate the responses of readers to his text, as well as to others' texts. But while it is true that Sterne, like Johnson, resisted the imbalances of authority inherent in systems of patronage, Sterne, much more than Johnson, appears to be advocating on the part not only of authors, but of readers. While Johnson's work often seems invested in determining how the reading public *ought* to respond to texts, Sterne's dedication is invested in the reading public's actual response to texts, and—in the final analysis—on the freedom of an author to develop an intimate, interactive relationship with the reading public unhampered by the hierarchical structures on which patronage rested.<sup>172</sup>

In addition to distinguishing Sterne from Johnson, this focus on the independence of the author-reader relationship separates him from later authors invested

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<sup>172</sup> In choosing the term "interactive," I do not mean simply to suggest—as one certainly could—that *Tristram Shandy* has a "hypertextual," or as Espen Aarseth would have it, a "cybertextual" aspect. Instead, I mean to reassert the term's material valences, emphasizing not only the "mental" but also the bodily interaction between reader and book. See Espen J. Aarseth, *Cybertext: Perspectives on Ergodic Literature* (Baltimore: Johns Hopkins University Press, 1997).

in the idea that great poets must remake public taste.<sup>173</sup> The attitude taken by Wordsworth in his preface to *Lyrical Ballads* (1800) shares much with Johnson's, for as Wordsworth asserts, "an *accurate* taste in Poetry, and in all the other arts... is an *acquired* talent, which can only be produced by thought and a long continued intercourse with the best models of composition."<sup>174</sup> Both Johnson and Wordsworth see it as part of their authorial duties to direct readers towards appropriate models<sup>175</sup> and help them train their ear for language; and although Wordsworth does not describe this duty in terms of patronage, his ability to assert his literary authority as he did probably depended, at least to some degree, on the changes in patronage that had happened during the eighteenth century. To the degree that the author-reader relationship in (some examples of) romanticism is hierarchical,<sup>176</sup> it replicates the power structures of patronage, differing only in that the author and patron appear to have merged.

### **Recto Contra Verso**

In its first two dedications, *Tristram Shandy* envisions an intimate and interactive author-reader relationship, but how does that vision translate to the novel as a whole? Shandy's oft-quoted assertion that "writing, when properly managed... is but a

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<sup>173</sup> For a discussion viewing Sterne as a proto-romantic author, see Peter Conrad, *Shandyism: The Character of Romantic Irony* (Oxford: Basil Blackwell, 1978). See also Marshall Brown, *Pierromanticism* (Stanford: Stanford University Press, 1991).

<sup>174</sup> William Wordsworth and Samuel Taylor Coleridge, *Lyrical Ballads*, ed. R. L. Brett and A. R. Jones (New York: Routledge, 1991), 271.

<sup>175</sup> It is worth noting here the OED's etymology of the term "patron"—it begins "Anglo-Norman and Old French, Middle French, French *patron* model, pattern."

<sup>176</sup> Clearly not all romantic authors follow the example given by Wordsworth here, nonetheless, his attitude here does provide a convenient example of the way in which the diminution of patrons' authority continued to create new possibilities for authors to assert their own authority.

different name for conversation" (1:125) suggests one answer to this question; the term "conversation" is quite compatible with the amiable, interactive, give-and-take relationships that *Shandy's* dedications imagine. However, the idea that "writing" and "conversation" could be synonymous contains a paradox. Especially in the context of print media, the relationship between writers and readers is in many ways less akin to the relationship between two friends sitting in a parlor, and more akin to the relationship between a speaker at a podium and the members of a listening audience. Some critics, favoring this latter model of reading, have interpreted the term "conversation" in the above quotation to mean something closer to "speech," arguing that Sterne meant his novel to "sound" as if it consisted of spontaneous oral discourse. Of course the problem with this approach is that, as a written text, the novel doesn't really have a sound at all. Hence one critic concludes that *Tristram Shandy* is less conversational than a "conversationalistic" (Hnatko 235); Sterne fosters a captivating *illusion* of conversation, but he cannot offer the real thing.<sup>177</sup>

Other critics, attending to Shandy's own definition of "conversation," interpret it more metaphorically, focusing on the ways in which the novel leaves its readers "something to imagine" (1:125).<sup>178</sup> By leaving substantial gaps in his narrative, they argue, Sterne allows readers to participate more fully in the imaginary world he has

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<sup>177</sup> Eugene Hnatko lays out this argument most fully in "Sterne's Conversational Style," *The Winged Skull: Papers from the Laurence Sterne Bicentenary Conference*, ed. Arthur Cash and John M. Stedmond (Kent, Ohio: Kent State University Press, 1971), 229-36. See also Louis T. Milic's companion piece, "Information Theory and the Style of Tristram Shandy" in *The Winged Skull*, and for a related approach, see Pat Rogers, "Tristram Shandy's Polite Conversation," *Essays in Criticism* 32 (1982), 305-20.

<sup>178</sup> Sterne states more fully, "As no one, who knows what he is about in good company, would venture to talk all;—so no author, who understands the just boundaries of decorum and good breeding, would presume to think all: The truest respect which you can pay to the reader's understanding, is to halve this matter amicably, and leave him something to imagine, in his turn, as well as yourself."

brought into being.<sup>179</sup> However, this remains a fairly loose interpretation of the term "conversation" because it leaves a sharp articulation between the contributions of the writer and the contributions of readers. Although readers may invent an exciting new plot thread, the novel cannot answer in reply, as a literal reading of the term "conversation" would require. Readers' contributions begin where the writer's end, and never the twain shall meet; the "conversation" remains one-sided and illusory.

As an alternative to these two interpretations of "conversation," I offer a more literal reading of the term. Clearly no definition of the term could arrange for Shandy and his readers to literally spend an evening in face-to-face conversation, but consider for a moment the etymology of the term "conversation": it derives from the Latin *conversare*, meaning literally to turn to and fro. From the related verb *vertere*, we also have the word "verso," meaning the back page of a book's leaf, the side visible after the leaf has turned. I would argue that the conversation between author and reader in *Tristram Shandy* finds its apotheosis in the textual phenomenon of discontinuous reading—the active turning of pages to and fro.

This definition of "conversation" is able to come much closer to the word's literal meaning because it emphasizes the embodiment of the book resting in a reader's hands. Although neither Shandy nor Sterne (since 1768) could be embodied as human conversation partners, they are in a certain sense embodied by their book; through this bookish body, they can interact with their readers in a limited way. Interaction of this

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<sup>179</sup> Wolfgang Iser quotes the above passage to make this very argument: "Sterne's conception of a literary text is that it is something like an arena in which reader and author participate in a game of the imagination" (*The Implied Reader* (Baltimore: Johns Hopkins University Press, 1974), 275).

sort becomes impossible if we think of *Tristram Shandy* as a work—as a fixed abstraction, an eternal, static text looking down on us from Plato's heaven of forms. One cannot interact with an eternal form, since it will never change in response to our actions. However, we can interact with the physical book, manipulating it and transforming it through our reading practices. If we read the physical book backwards—if we skip every other chapter—if we reread the sixth volume three times—then we have no longer read *Tristram Shandy* the Platonic form, but we have still read *Tristram Shandy* the book. And unlike *Tristram Shandy* the Platonic form, *Tristram Shandy* the book changes when we read it differently, responding in its own modest way with a new text, a new work—a new Platonic form—every time its reader turns its pages to and fro.

*Tristram Shandy* explores this possibility by fictionalizing it and incorporating it into its narrative, including imagined readers as characters. At the beginning of one chapter, Shandy accosts an imagined reader with the provoking claim that she has misread the previous chapter: "--How could you, Madam, be so inattentive in reading the last chapter? I told you in it, That my mother was not a papist." Most first-time readers would probably sympathize with the female reader's response: "--Papist! You told me no such thing, Sir" (1:64). Shandy, however, remains firm:

--Madam, I beg leave to repeat it over again, that I told you as plain, at least, as words, by direct inference, could tell you such a thing.--Then, Sir, I must have miss'd a page.--No, Madam, you have not miss'd a word.--Then I was asleep, Sir.--My pride, Madam, cannot allow you that refuge.--Then, I declare, I know nothing at all about the matter.--That,

Madam, is the very fault I lay to your charge; and as a punishment for it, I do insist upon it, that you immediately turn back, that is as soon as you get to the next full stop, and read the whole chapter over again. (1:64-65)

Having thus banished her, Shandy continues as if he were speaking to another person who remains in his audience; to this other reader (identified later as male), he explains her banishment more fully: "'Tis to rebuke a vicious taste, which has crept into thousands besides herself,--of reading straight forwards, more in quest of the adventures, than of the deep erudition and knowledge which a book of this cast, if read over as it should be, would infallibly impart with them" (1:65).

This passage has proven difficult to interpret. Some critics have seen evidence here and elsewhere that Sterne's novel seeks to mock and exclude certain naive reading practices, which it genders as female; other critics have seen in these and other moments evidence of a liberated reader whose resistance is fundamental to the novel's construction of meaning.<sup>180</sup> The stark contrasts between these positions suggest that *Shandy's* treatment of its imagined readers is genuinely ambiguous, and I do not hope to dispel that ambiguity, but rather to heighten it. The debate between these readings has often been framed as a dispute over whether or not we can distinguish Shandy's attitude

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<sup>180</sup> Ruth Perry and Barbara Benedict offer exclusionary readings, arguing in different ways that Sterne's novel genders naive, unreflective reading practices as feminine through its references to the female reader. See Barbara M. Benedict, "'Dear Madam': Rhetoric, Cultural Politics and the Female Reader in Sterne's *Tristram Shandy*," *Studies in Philology* 89 (1992), 485-98 and Ruth Perry, "Words for Sex: The Verbal-Sexual Continuum in *Tristram Shandy*," *Studies in the Novel* 20 (1988), 27-42. For examples of liberatory readings, see Leigh A. Ehlers, "Mr. Shandy's 'Lint and Basilicon': The Importance of Women in *Tristram Shandy*," *South Atlantic Review* 46 (1981), 61-75, and especially Helen Ostovich, "Reader as Hobby-Horse in *Tristram Shandy*," *Philological Quarterly* 68 (1989), 325-42. Ostovich's discussion of the conversation between Shandy and his imagined readers provides a starting point for my reading of the novel. Finally, Paula Loscocco offers an excellent synthesis of these two extremes in "Can't Live without 'Em: Walter Shandy and the Woman Within," *The Eighteenth Century: Theory and Interpretation* 32 (1991), 166-79.

toward the female reader from Sterne's. Shandy's position certainly appears to be critical of the female reader, since he excludes her, insisting that she leave the "room," and then carries on conspiratorially with another apparently male reader while she is gone. To this male reader, he characterizes his action as "punishment" designed to "rebuke a vicious taste." If we take Shandy's words at face value, then he is surely mocking what he sees as feminine reading habits associated with unprestigious genres such as romance.

When we recognize that Shandy is himself the object of satire in this passage, however, other readings become available. Following passages reveal just how far-fetched Shandy's self-interpretation is. Shandy sees himself as having said that his mother was not Catholic, and has suggested that his "Madam" reader will encounter "deep erudition and knowledge" if she rereads the previous chapter. However, the payoff he offers her (and us) after her return is intentionally confusing, pompous, banal and deceptive. When the female reader returns, Shandy pedantically instructs her "to ponder well the last line but one of the chapter, where I take upon me to say, 'It was necessary I should be born before I was christen'd.' Had my mother, Madam, been a Papist, that consequence did not follow" (1:65). This self-interpretation takes literally a statement that, placed in context, reads more readily as a metaphor expressing the notion that Shandy needed to *describe* his birth before *describing* his christening: "if it was not necessary I should be born before I was christened, *I would this moment give the reader an account of it*" (1:64, italics mine). Shandy is referring to an account of his mis-naming, which, if he is to preserve narrative unity, must follow his account of his



birth. To deduce that Shandy's mother was not Catholic, one must thus misread the original passage, or at least read it against its grain.<sup>181</sup> Furthermore, the information necessary to make such a deduction isn't presented until *after* the female reader returns: Shandy then offers a footnote summarizing and reproducing in full a tedious and legalistic decision by a French ecclesiastical council establishing that an unborn child in danger of death could be baptized by syringe. Hence the female reader's excursion served no purpose, and Shandy's so-called "deep erudition and knowledge" arrives in a straightforward way—that is, in a way perfectly amenable to "reading straight forwards," the habit Shandy purports to rebuke.<sup>182</sup> Even Shandy's claim to provide "deep erudition and knowledge" here is suspect. The inference Shandy wished his female reader to draw was based on an obscure and superficial technicality of Catholic orthodoxy, a minor quibble that provides few moral or theological insights of any depth.

These observations all suggest that our laughter should be directed not at the female reader, but at Shandy as he flails comically in his own bombast; Shandy appears to be the object of Sterne's satire, just as the female reader is the object of Shandy's. In

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<sup>181</sup> Leona Toker makes a strong case that Shandy's self-interpretation is "underhand" (Leona Toker, "Narrative Enthymeme: The Examples of Laurence Sterne and James Joyce," *Partial Answers* 4.2 (2006), 167), and I follow her reading here. However, other readings of this passage are possible. Toker's argument relies on the commonsense notion that the facts of Shandy's birth will not change if he narrates them differently, her argument thus assumes that we can make a strong distinction between Shandy's life and his account of it. Since Shandy often toys with the idea that we cannot, that assumption may not hold. If it does not hold—that is, if Shandy and his book are one and the same—then his description of his birth is identical with his actual birth, and the fact that his mother is not Catholic becomes not an *a posteriori* truth about his mother, but an *a priori* truth that arises directly from the structure of the narrative itself. In this latter case, the literal and metaphorical interpretations of his statement would be compatible, because if Shandy had narrated his christening before his birth, then his mother would have been Catholic by logical necessity. Furthermore, if we insist that the order in which we read matters more than the order in which Shandy wrote, then we can read his text out of order and transform his mother into a clandestine Catholic!

<sup>182</sup> Paula Loscocco makes a similar observation, pointing out the staid literal-mindedness of Shandy's "insight" which he presents in a remarkably straightforward way, all things considered (171-172).

that case, the female reader is correct to resist Shandy's claims, and a strong case appears for identifying with her in her resistance. And yet such a reading neglects the possibility that Shandy means to parody himself, and that he knows his claims are ridiculous. If that is the case, then do we ridicule the female reader for resisting claims that were never meant to be taken seriously? Do we extend the same presumption of self-consciousness to her, reading the conversational exchanges between her and Shandy as a series of conspiratorial winks and nods? Or do we step even further back and read the female reader as a model of "safe" resistance designed (by Sterne) as a distraction from more unruly ways of reading the novel? *Tristram Shandy* makes each of these readings available, along with many more, depending on our conclusions about who is in on the joke.

The ambiguity of this passage is further heightened by Shandy's use of a comment by Pliny the Younger about reading. As Shandy puts it, the reading mind should be accustomed to make wise reflections, and draw curious conclusions as it goes along; the habitude of which made Pliny the younger affirm, 'That he never read a book so bad, but he drew some profit from it.' The stories of Greece and Rome, run over without this turn and application,--do less service, I affirm it, than the history of Parismus and Parismenus, or of the Seven Champions of England, read with it. (1:65)

Here again, Shandy's claims remain deeply ambiguous. "A book of this cast," he has said—but what cast might he mean? Initially it seems as though he is claiming to have

written a book *containing* "deep erudition and knowledge," which his book, "if read over as it should be, would infallibly impart." According to this interpretation of his claims, *Tristram Shandy* caters to an exclusive group of discerning readers, who are able to decipher its subtle and profound hints. But Pliny speaks above specifically about reading "bad" books; a good reader (like Pliny) can profit from even the worst books, those most devoid of wisdom or value. We could therefore just as easily read Shandy as having aligned his book—consciously or not—with unprestigious works of literature such as *The Seven Champions of Christendom*,<sup>183</sup> the 1735 edition of which promises on its title page "Tilts, Justs, Tournaments for Ladies" and "Combats with Giants, Monsters and Dragons." In this alternative reading, a work of *Tristram Shandy's* cast must be read discontinuously to have any value at all, since according to Pliny's statement, any book, "if read over as it should be," has some value.

Through these ambiguities, the satire in this passage is directed at all parties, even Pliny the Younger, since Shandy has subtly suggested that Pliny would have happily read romances and tales of knight-errantry, had they been available. But what of the other reader, the male reader to whom Shandy speaks while the female reader is gone? An exclusionary reading of this passage might argue that this male reader is part

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<sup>183</sup> As Melvyn New observes in the notes to the Florida Edition, Sterne's reference to "The Seven Champions of England" could be a distortion of the title of *The Seven Champions of Christendom* (3 433) by Richard Johnson first published around 1640. It could also be an echo of a line from William Wycherley's *The Plain Dealer* (London: James Magnes and Rich. Bentley, 1677, rpt. in *Early English Books Online*), in which a young, naive male character asks to see "'Saint George for Christendom' or 'The Seven Champions of England'" (44), the character has accidentally commingled the titles *The Seven Champions of Christendom* and *Saint George for England* under which several popular works and ballads were published in the seventeenth century. The question of whether Shandy is in on the joke thus extends to Sterne himself. Is he self-consciously quoting Wycherley's play, or is he making the same error Wycherley's character did? In any case, Wycherley's example demonstrates that, by the time Sterne was writing, such works had long been associated with naive, uninformed readers.

of Shandy's "in" crowd, and that because we read alongside him while she's away, we are all conscripted to join them in their mockery of the female reader. Even Paula Loscocco's canny navigation of this passage argues that, as readers, we are unavoidably drawn towards a static, literal reading of the passage.<sup>184</sup> But I would argue that even here, ambiguity remains. Shandy carries on with the male reader while the female reader is "away," seemingly excluding her; but if right reading is fragmentary reading, then by the end of the episode, the female reader has become a model of *right* reading, while the male reader, to whom Shandy speaks while she is away, has become a model of *wrong* reading: one who reads "straight forwards" through the passage. Furthermore, if we read continuously along with the male reader, then we too have read wrongly; we ought to have followed the female reader's circuitous path through the text, and there was nothing to prevent us from doing so apart from the conventions of everyday reading. If Sterne's novel does create a gendered hierarchy of reading styles, then that hierarchy is quite unstable.

Through that instability, Sterne levels all hierarchies of reading practices. Certainly Shandy expresses certain norms about reading; but the hierarchy that results is a self-destructive one. By sending his female reader back to the previous chapter, Shandy—perhaps inadvertently—illustrates a method of reading oneself out of such hierarchies. Perhaps it is true that when read straight through, the "stories of Greece and

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<sup>184</sup> Loscocco argues that Shandy's pedantic footnote "compels the literal or 'concupiscent' reading that Tristram has just professed to abhor" (172), and that we therefore cannot escape being cast by the novel as naive, unreflective, literal-minded readers. This argument does not recognize the full extent of the paradox; for by reading so literally, we actually *disrupt* the most unreflective, most straightforward reading of the phrase "It was necessary I should be born before I was christen'd": the reading of that phrase as referring to narrative order rather than theological doctrine.

Rome" have more value than simple romances, and thus occupy a higher place in the hierarchy of texts; but even so, discontinuous reading—conversational reading—enables readers to profit from any text. Sterne does draw on the stereotypical view of romances as "womens' reading," but not to reinforce it; rather, he shows how "womens' reading" and woman readers can escape the hierarchical orders of reading.

Yet at the same time, the ambiguities of this passage ensure that, whether we follow the male reader's or the female reader's path through the text, the joke remains on us. The satire in this passage is so multivalent that finding a clear satiric norm is difficult, and I would argue that Sterne's novel offers no unambiguously correct reading strategy. Instead, the novel turns even "continuous" reading into an error, in effect ensuring that in-order reading *is* discontinuous reading. This is not the result of authorial coercion (through the controlling figure of Shandy) but of the structural incoherence of the text, an incoherence that forms the kernel of Sterne's satirical method. *Tristram Shandy* is more than a text composed of "shreds and clippings of the rest" (1: 8), a work written in fragments—it is a book that cannot be put back together again.

Furthermore, as I interpret the novel, discontinuous, conversational reading emblemizes reading under the regime of copyright, while reading "straight forwards" emblemizes reading undertaken within the patronage system. As the initial dedication of *Tristram Shandy* suggests, patrons take *works*, Platonic abstractions, under their protection, not embodied books specifically designed to be read out of order;<sup>185</sup> nor

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<sup>185</sup> Order is also fundamental to the genre of the dedication: dedications almost always precede the text of

would one expect a patron to endorse a book without having at least some sense that its meaning is stable—stable enough, at least, not to be turned against the patron.

Discontinuous reading threatens such stability. Sterne's dedication of *Tristram Shandy* to William Pitt pretended to offer him the fixed Platonic abstraction of a text, substituting a physical book at the last moment. The remainder of *Tristram Shandy* does the same for all Sterne's readers. If even in-order reading is discontinuous reading, then the fixed Platonic abstraction of the text remains permanently out of reach. But was it ever really in reach at all? As we read further into the novel, I would argue, we find that in-order reading, like the centering authority of patronage, has always been an illusion.<sup>186</sup>

### Space, Sequence, Accident

Sterne's novel deploys other kinds of ambiguity in ways that are not as provocative, but are perhaps even more disorienting. These techniques have been grouped together by some critics under the name "spatial form," a term that Christopher Fanning defines as "the cross-referenced fragmentation of sequence." This compact but somewhat opaque definition is best illustrated by a simple example that appears during

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the work, and out-of-order reading thus interferes with their generic underpinnings

<sup>186</sup> In this respect, I am edging toward a reading of Sterne as an early exponent of "reader response." One might ask, following Stanley Fish, is there a text in *Tristram Shandy*, or in any work? However, my approach differs from many reader-response critics in that I am less interested in the "subjective" response of a socially and culturally situated reader, than I am in the *objective* differences between reading styles—at least in so far as the term "objective" has meaning. In her introduction to the essays collected in *Reader Response Criticism*, Jane Tompkins states that "the objectivity of the text is the concept that these essays, whether they intended it or not, eventually destroy" (*Reader Response Criticism: From Formalism to Post-Structuralism* (Baltimore: Johns Hopkins University Press, 1980), x). However, the difference between readers is also an observable, reproducible fact manifested in the corporeal process of reading. In other words, if you watch a reader, you will see how they turn the pages, and if you watch two readers, you will see how they turn the pages differently.

a conversation between Toby and Walter Shandy about pregnancy and childbirth. Faced with the same evidence, they come to divergent conclusions, Toby sympathizing with and Walter scorning the behavior of women during pregnancy, but they both express their feelings in identical ways, by shaking their heads: "since the shaking of heads came into fashion, never did two heads shake together, in concert, from two such different springs." Shandy then illustrates this unusual coincidence with an idiosyncratic typographical move:

God bless  
                                   } 'em all—said my uncle *Toby* and my father, each to himself.  
 Duce take

Here we have an example of text that is less ambiguous in its meaning than in its preferred reading order. We can gather from context that Toby is doing the blessing and Walter the damning, but we cannot determine whether to read "God bless" or "Duce take" first, because they describe simultaneous events in the novel's world. At one point, Fanning describes the reading process called for by such formal moves as "a dance that perceives the structure of the space, actively moving back and forth, in essence creating meaning by performing these actions" (440). In other words, rather than moving sequentially through the text, readers scan the text as they would an image, perceiving a "structure," a network of *simultaneous* relations between distant points in the text, which constitutes the meaning of the text.<sup>187</sup> Fanning uses the phrase "creating meaning," but his characterization of spatial reading as way of "perceiving" structure

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<sup>187</sup> Fanning's account of meaning in *Tristram Shandy* thus draws from structuralism's emphasis on the synchronic aspects of language.

suggests something closer to the *reconstruction* of meaning already present in the "space" of the text. In the passage above, for example, we are likely to read either the top or the bottom line first, and then imaginatively reconstruct the simultaneous divergence of opinion that the text so cleverly evokes.

However, I want to push Fanning's picture of *Tristram Shandy's* readers a step further by insisting upon the fact that, although readers may skip from point to point in the novel, the sense of space generated thereby is illusory. It is illusory because few readers could actually read multiple parts of the novel simultaneously; the experience of reading *Tristram Shandy* is necessarily fragmented, but it does remain *sequential*. Readers still proceed from one word to the next, and few would hope to read several different lines of the novel at the same time. The simultaneity implied by spatial metaphors thus remains out of reach for most readers, arguably even in the relatively simple case cited above.<sup>188</sup> Furthermore, although some texts may yield the same "structure" regardless of the order in which they are read, *Tristram Shandy* does not; indeed, I would argue that the novel's design actively thwarts such uniform, predictable reconstruction. For this reason, I understand "spatial form" in *Tristram Shandy* not as an end, but as a means—Sterne uses it not simply to create space, but to create multiple potential entrances into and exits from the text. For whenever a given reader attempts (and inevitably fails) to capture a fully-spatialized reading of the text, that reader is likely to hit upon a completely novel way of reading it, entering, exiting and reentering

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<sup>188</sup> Speaking only for myself, I find that after first reading the two lines separately, I can imagine the sound of "God bless" and "Duce take" being spoken simultaneously, but I can push my reading abilities no further.



at unpredictable moments, tracing a unique path across the novel's pages.

Sterne exemplifies this phenomenon when he sends the female reader back to the previous chapter: the paths of his male and female readers diverge. Their divergence is planned, but if Sterne's readers follow the example of the female reader on their own, then their readings are likely to diverge from one another in many accidental ways. Accidents thus play even more of a role in *Tristram Shandy* than perhaps has been recognized. Peter J. De Voogd has examined parallels between late eighteenth-century theories of visual aesthetics and Sterne's "use of accidents,"<sup>189</sup> reading the novel's marbled pages—each of which, in the first edition, was a unique product of a randomized process—as an emblem of the novel's accidental essence. Shandy's sudden digressions and unexpected associations certainly appear accidental, and there is little doubt that accidents went into composing the novel; but I would argue that Sterne's formal techniques ensure that accidents play just as important a role for *readers*. De Voogd only hints at this idea, noting that "it is fitting that your copy of *Tristram Shandy* is different from mine, since your subjective experience of the book is different" (287). I want to modify this observation by noting that if we read discontinuously, then even readers' *objective*<sup>190</sup> experiences of the text are likely to differ. Imagine two readers, one of whom skips a chapter while the other reads through it. Even if we discard the individual biases, opinions and expectations these two readers bring to the text, their

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<sup>189</sup> *The Works of Joshua Reynolds*, 3 vols., (London: T. Cadell, 1798) 2:129-140, quoted in Peter J. de Voogd, "Laurence Sterne, the Marbled Page, and 'the Use of Accidents,'" *Word & Image: A Journal of Verbal/Visual Enquiry* 1.3 (1985), 279.

<sup>190</sup> For the purposes of my argument I am adopting De Voogd's implicit assumption that a distinction between "objective" and "subjective" experience exists. I am not at all certain that such a distinction is sustainable; nonetheless, it remains intuitively plausible that some kinds of experience seem more objective than others, in so far as they seem more easily reproduced than others.

readings still differ in a way that any other reader can observe and directly reproduce. Similarly, the marbled pages of *Tristram Shandy* turn out to be poor emblems of subjectivity, since although each is unique, the differences between them are as plainly objective as anything could be. I thus read *Shandy's* marbled pages as emblems of the accidental precisely in so far as accidents enable different readers to encounter the text in objectively (as far as is possible) unique ways.

### **The Owned Author**

The vision of author-reader relations that Sterne presents in *Tristram Shandy* is thoroughly anti-hierarchical; and this anti-hierarchical view shapes the novel's formal structure. It is a fundamental aspect of the language Sterne uses. In a world in which every reader participates equally in the production of meaning, literary authority becomes relentlessly democratic, but also wildly unpredictable; the prospect might have seemed, to Johnson, like something of a nightmare. But this unpredictable world is the very foundation of Sterne's text. The vision of the English language that Johnson describes in the preface to his *Dictionary*—a language which "has itself been hitherto neglected, suffered to spread, under the direction of chance, into wild exuberance, resigned to the tyranny of time and fashion, and exposed to the corruptions of ignorance, and caprices of innovation" (3)—looks just like the language with which *Tristram Shandy* was composed.

Like its language, the world of *Tristram Shandy* is chaotic and full of accidents, a world in which minor events have enormous consequences; causation itself in Sterne's

novel is radically democratized, and no patron or father-figure has the power to protect Shandy from the ravages of chance—from the immense destructive power of the ordinary. I return to one of the the images with which I began, *Tristram Shandy's* lonely embryo:

The HOMUNCULUS, Sir, in how-ever low and ludicrous a light he may appear, in this age of levity, to the eye of folly or prejudice;--to the eye of reason in scientifick research, he stands confess'd--a BEING guarded and circumscribed with rights[...] and, in all senses of the word, as much and as truly our fellow-creature as my Lord Chancellor of England[...] Now, dear Sir, what if any accident had befallen him in his way alone?--- -or that, thro' terror of it, natural to so young a traveller, my little gentleman had got to his journey's end miserably spent;---his muscular strength and virility worn down to a thread;--his own animal spirits ruffled beyond description,--and that in this sad disorder'd state of nerves, he had laid down a prey to sudden starts, or a series of melancholy dreams and fancies for nine long, long months together." (3).

All because of a clock.

This portrait of Shandy's minuscule body, deprived of the protective "animal spirits" that ought to have "conducted him safe" (2) to his mother's womb, brings to mind the etymological association between *patronus* and *pater*. The interruption of Walter Shandy deprives Tristram of fatherly protection even before his birth. Further confusion ensues during and after his birth; Walter's decision to have Tristram delivered

locally by Dr. Slop—who he reasons will be able to prevent Tristram's skull from being deformed in birth by using forceps—results in a crushed nose; and Walter also fails to ensure that Parson Yorick's curate christens his son with the auspicious name Trismegistus, which accidentally becomes distorted into Tristram—a devastating result, for as Tristram's uncle Toby puts it, Walter insists "there never was a great or heroic action performed since the world began by one called *Tristram*" (1:352). These and many other comical mishaps all heighten the parallel between Tristram's constant exposure to the ravages of chance, due to his father-protector's errors, and *Tristram Shandy's* status as a (relatively) unpatronized and unprotected text.

This parallel is appropriate given the many moments in which Tristram's life is equated with his book. I'll focus briefly on one oft-cited example—just before the episode in which Walter fails to have Tristram named Trismegistus, Shandy makes the following observation

upon the strange state of affairs between the reader and myself... an observation never applicable before to any one biographical writer since the creation of the world... I am this month one whole year older than I was this time twelve-month; and having got, as you perceive, almost into the middle of my fourth volume--and no farther than to my first day's life--'tis demonstrative that I have three hundred and sixty-four days more life to write just now... so that instead of advancing, as a common writer... on the contrary, I am just thrown so many volumes back... the more I write, the more I shall have to write--and consequently, the more

your worships read, the more your worships will have to read. (1:342).

Shandy finds that he is stuck in a sort of autobiographical ouroboros, a self-reflexive snare in which his book and himself entrap one another. Shandy's, however, is not a solipsistic trap; he describes this conundrum as a problem not only for himself, but also for his readers. I read this passage not simply as an example of Sterne's self-reflexive playfulness, as many have, but as a moment in which book, author *and reader* are all entwined. This proliferating unity of author, book and reader is, I would argue, the fundamental conceit of *Tristram Shandy*. Shandy, as a book in William Pitt's hands, and in the hands of readers all over Britain, moves unprotected through a non-hierarchical marketplace, accruing new structures and meanings as readers see fit to assign them. In the process, readers dismember and reconstitute Shandy's body, the body of the text, just as Tristram's body and name are distorted in the process of his birth. *Tristram Shandy* is fecund in its materiality, Rabelaisian in its textual grotesqueries.

*Tristram Shandy's* two dedications, I have argued, both transform the patrons to whom they are addressed into mere readers. But in a certain sense, the patron was never anything more than a reader—a reader with a difference. A patron was a privileged reader, a reader capable of dictating meanings and values with greater authority than other readers. From this perspective, the transformation that Sterne's dedication describes translates into a democratization of reading. In the (impossible, utopian) absence of a privileged reader, all readers contribute equally to meaning. Furthermore, if it is the case that the authority of the patron to circumscribe meaning is the same authority that would eventually be transferred to the "author-function," then we might

say that, insofar as the "author-function" serves to constrain meaning, it does so not as a surrogate for the writer, but as a surrogate for the *privileged reader*. This brings to mind Shandy's sales pitch, as he evaluates his dedication on the painter's scale: "if I may be allowed, my Lord, to understand my own *design*"—if, that is to say, Shandy's own self-interpretation is to be credited—then his literary authority is simply a matter of reading. In matters of meaning, the author is just another reader.

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